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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 30 August 1994

# Journal des débats (Hansard)

Mardi 30 août 1994



**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

Planning and Municipal Statute Law  
Amendment Act, 1994

Loi de 1994 modifiant des lois  
en ce qui concerne l'aménagement  
du territoire et des municipalités

Chair: Rosario Marchese  
Clerk: Donna Bryce

Président : Rosario Marchese  
Greffière : Donna Bryce

*50th anniversary*

**1944–1994**

*50<sup>e</sup> anniversaire*



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Tuesday 30 August 1994

Mardi 30 août 1994

*The committee met at 1001 in the Ramada Suites hotel, Niagara Falls.*

PLANNING AND MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT DES LOIS  
EN CE QUI CONCERNE  
L'AMÉNAGEMENT DU TERRITOIRE  
ET DES MUNICIPALITÉS

Consideration of Bill 163, An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes related to planning and municipal matters / Projet de loi 163, Loi révisant la Loi sur la planification et l'aménagement du territoire de l'Ontario, la Loi sur les conflits d'intérêts municipaux, et modifiant la Loi sur l'aménagement du territoire et la Loi sur les municipalités et modifiant d'autres lois touchant des questions relatives à l'aménagement et aux municipalités.

**The Vice-Chair (Ms Margaret Harrington):** Welcome to this wonderful city of Niagara Falls. Today we will have half-hour presentations by groups and 15-minute presentations by individuals.

REGIONAL MUNICIPALITY OF  
HAMILTON-WENTWORTH

**The Vice-Chair:** I call upon Mr Guy Paparella, who is the division head with the regional municipality of Hamilton-Wentworth. You have half an hour, and we would appreciate if you would leave part of that time for the three parties to ask questions. You may go ahead.

**Mr Guy Paparella:** Thank you, Madam Chairman. On behalf of the regional municipality of Hamilton-Wentworth, I would like to extend my appreciation to members of the standing committee on administration of justice for the opportunity to address the provincial government's proposed revisions to the Planning Act and other related acts.

The region of Hamilton-Wentworth supports many of the changes proposed under Bill 163; however, it is the region's view that certain provisions require revision prior to the amending of the acts.

Changes under the Planning Act, which we are going to be commenting on, are essentially focused on six different areas of concern:

- (1) time frames for planning processes;
- (2) subdelegation of authority;
- (3) public participation in the subdivision approvals process;
- (4) limitation of municipal liability in relation to the

prohibition of development on contaminated, environmentally significant and archaeological sites;

(5) Ontario Hydro and provincial policy statements; and

(6) a joint process under the Planning Act and Environmental Assessment Act.

There are a number of other changes which are being proposed, and I'll address one proposed change under the Municipal Act, the protection of vegetation.

Changes under the Planning Act: While the new time frames are intended to streamline and provide for a more efficient planning process, a less timely process may result from having the same requirements for simple applications as complex applications. The region's comments pertain primarily to the new processes for official plans and amendments and subdivisions.

The region of Hamilton-Wentworth recommends the addition of a new section which would require that the 180-day time frame for holding a public meeting on an official plan amendment begin only when full information is received.

A proper evaluation of any proposal cannot be conducted until full information, often in the form of specialized studies, is received. To do otherwise might compromise the goal of good planning.

Secondly, the region of Hamilton-Wentworth recommends deletion of the proposed 30-day requirement between a public meeting and council's adoption of an official plan amendment.

Currently it is usual for the region to adopt an official plan amendment six days after the public meeting and planning committee recommendation to adopt, and notifications are only given after such adoption by council. If the resolution of some issues remains outstanding, the matter can always be deferred by the approval authority. The region's recommendation supports the goal of providing more timely planning processes.

Thirdly, the region of Hamilton-Wentworth recommends deleting the provision delaying requests for referral of official plans and amendments to the OMB until after the approval authority gives notice of a proposed decision, and reinstating the section allowing referral requests to be made any time after adoption.

Bill 163 would result in a duplication of process since similar notification would have to be sent out before a proposed decision and following the decision. The approval authority's proposed decision should only require notification when there are proposed modifica-



tions, refusals or a referral. Referral requests submitted after adoption could be dealt with either through mediation or referral. This would also enable the applicant to have a final decision earlier and would make use of mediation which is encouraged in Bill 163.

The region of Hamilton-Wentworth recommends changing the time for dealing with referral requests from a 30-day maximum time limit to a 90-day maximum time limit.

A major theme in Bill 163 is the encouragement of mediation, which would be compromised with the imposition of a 30-day time limit because it would provide insufficient amount of time for preparation and mediation. Where mediation does not work, referral must often be dealt with by a committee and council, which usually cannot be done in 30 days, but could be done before the 90-day term elapses. Where mediation does work, there would be no need to refer the matter to the OMB, thus saving time and money in the long run.

The region of Hamilton-Wentworth also recommends the deletion of the 30-day requirement between the public meeting and approval of draft plan of subdivision.

As with the time requirement before adopting official plan amendments, there seems to be little purpose for the delay, especially given that principles related to type and form of development will be determined at other stages of the planning process.

The region of Hamilton-Wentworth recommends that the current certificate of approval be retained for official plans and amendments, instead of the proposed employee statement.

The current certificate of approval clearly indicates approval, modifications, deferrals and referrals. An employee statement dealing with notification processes and the absence of appeals cannot deal with these matters if the approval authority is a regional council. Council resolutions etc would have to be attached to indicate the actual decision.

Further, the region of Hamilton-Wentworth recommends changing the direct appeal process for plans of subdivision to a referral request process.

Council should retain the ability to screen out objections which are frivolous, vexatious or not in good faith or for purposes of delay, as this may avoid an OMB hearing, thereby saving time and money. Such a provision also gives the opportunity for mediating settlements, a goal cited throughout Bill 163. The referral system has the potential to reduce hearings through screening of objections and mediation.

Subdelegation of authority is our second area of concern. We have one recommendation in this area. The region of Hamilton-Wentworth recommends the addition of a new section allowing council to delegate approval authority to an official for official plan amendments and subdivisions, where there is no conflict.

Currently the region has subdelegated approval authority for official plans and amendments and subdivisions where there are no objections. This means an official signs the document and the matter is not forwarded to committee or council. This streamlining measure usually

saves an applicant two to four weeks. Public participation in the subdivision approval process is another area of concern. The region of Hamilton-Wentworth recommends that notification be required, and appeals of conditions of draft approval of plans of subdivision by the general public should be permitted only when major changes are proposed, and that major changes should be defined by regulation.

The region of Hamilton-Wentworth recommends that secondary plans, adopted as official plan amendments, can contain policies obviating the need for public input in the subdivision approval process.

In other words, detailed secondary plans prepared for official plan amendments are already subject to full public notification and the dispute resolution process. Duplication can be avoided and streamlining achieved by not subjecting plans of subdivision to further public review. Criteria to qualify secondary plans for obviating the need for a public subdivision process should be prescribed by regulation.

#### 1010

Another area of concern is the limitation of municipal liability. The region of Hamilton-Wentworth recommends that Bill 163 clarify that there is no municipal liability for prohibition of development on contaminated, environmentally significant or archaeological sites.

Bill 163, under proposed section 34.1, allows zoning bylaws to prohibit development on contaminated land, in sensitive groundwater recharge areas or in areas with significant natural features and archaeological sites. It should be made clear in the legislation that such prohibitions do not incur municipal liability for compensation.

Another area of concern is Ontario Hydro and provincial policy statements. The region of Hamilton-Wentworth recommends that Ontario Hydro be required to ensure that its decisions "are consistent with" provincial policy statements similar to other municipal jurisdictions.

Environmental Assessment Act-Planning Act joint process is another area of concern we have. The region of Hamilton-Wentworth recommends that Bill 163 include a more detailed definition of the procedure that would allow the requirements of both the Environmental Assessment Act and the Planning Act to be met concurrently.

Bill 163, under section 9 of the bill, proposed section 16.1 of the Planning Act, permits municipalities to develop processes that simultaneously meet the requirements of both the Environmental Assessment Act and the Planning Act. However, it does not specify how this should be done or make references to regulations that would guide such a dual process. Given the complexities generally associated with undertaking these two very different processes, it would be useful to have more direction as to which specific parts of the process could be combined. This type of direction is now particularly important because large subdivisions have been made the subject of EA procedures.

Changes under the Municipal Act: We have one area of concern, the protection of vegetation. The region of



Hamilton-Wentworth recommends that a new section be included in the Municipal Act to permit the passing of municipal bylaws to protect vegetation.

The new proposed provincial policy statements would severely restrict development in environmentally significant areas that contain extensive amounts of natural vegetation and wildlife. Many land owners/developers could try to circumvent these restrictions by destroying vegetation before they applied for Planning Act approvals such as zoning bylaw amendments, subdivision approvals, site plan control approval.

Under the current tree protection enabling legislation, maximum fines are so low that municipal tree cutting bylaws are incapable of deterring land owners who want to destroy significant woodlots to facilitate development. It should be noted that the proposed tree protection legislation has been shelved, largely as a result of rural concerns. However, the changes proposed here should be directed at largely urban municipalities.

That is the end of my presentation, Madam Chairman. I have attached the region of Hamilton-Wentworth report that was endorsed by regional council; it further details what I have presented here today. I once again thank you from Hamilton-Wentworth for the opportunity to present our views.

**Mr Ron Eddy (Brant-Haldimand):** Thank you for your presentation. You've certainly given us a lot of things to consider, there's no doubt about that. There are some things, and to start with, I'd say I agree with completely on the vegetation control. That's been proposed several times in the province, to let those municipalities that wish to control the elimination of vegetation in fact to do so. That's an easy one, I think, to endorse. The other one, number 5, Ontario Hydro and provincial policy statements, they'll be asking the ministry what their view on that particular thing is, another very important thing.

But I guess there is one item of contention that I'd like you to comment on and that has to do with the delegation of authority. In view of the fact that you're asking for the delegation of authority for some things to an official, in what way do the members of council become familiar with and know about the changes that would be approved? Is there a process or would you propose a process of some kind so that members, especially I suppose if it's in their—I shouldn't use "ward" I guess, in the case of the region; it would be municipality or whatever area they represent—would know and be familiar with the changes?

**Mr Paparella:** That's a very good question, and I think it's something that we've grappled with over the years. Presently we do have a subdelegation to our commissioner of planning and development, and in his absence, it would be myself. In that situation, what we do is, if there are no conflicts that have been raised by an amendment put forward to us, we would approve it in a matter of days or a week or so, and that information would be forwarded prior to the commissioner signing off on that approval.

There would be an information report circulated to all members of regional council so that they would be

informed of a potential decision coming forward. If there are any conflicts or any issues of controversy in that amendment, the commissioner's bylaw requires that he report to council prior to making that decision. So there would be discussion in time for input formally through a committee or council at that point prior to him making the decision, but the decision would be his. He takes advice obviously from his council and his committee before he makes that decision, but the decision according to this bylaw would be his.

It has really received a lot of positive comment from our development community, from the public, from any applicants who have wished for their application to move forward quickly. In some cases two or three days have elapsed from the receipt of a document from the municipality to the time when it is actually approved. So for non-controversial issues, it's really critical for our area that that be included in the bill and the amendments.

**Mr Eddy:** With that explanation, I'm relieved and I can support it. So thank you.

The other thing just quickly, there'll be some opposition to your proposals I expect to lengthen the time period, the time frames in some cases, but you're doing that in order to shorten the time actually.

**Mr Paparella:** That's correct.

**Mr Eddy:** This is what I got from your—

**Mr Paparella:** That's correct.

**Mr Alvin Curling (Scarborough North):** I too, Mr Paparella, would like to commend you for your presentation. I had mentioned to my colleague here about the vegetation policy you placed here. My concern all the time too, whenever there are developments happening and the depletion of that vegetation, even if some of those developers could put back some of those trees, it would be something that is contributing.

Just one aspect of it I want your clarification on for my purpose. Number one, you talked about the official plan amendment beginning only when full information is received. Who would determine when there's full information, or do we just say "all required information"? What would be regarded as full information?

**Mr Paparella:** I think that relates more to the good work that Mr Dale Martin is doing at this time in trying to complete a manual or a guideline for what, he coined a phrase, the complete application. I think what we're looking for is some guidance in a regulatory form that would indicate in any particular issue what exactly constitutes a complete application and make that part of a regulation that we could use as a guide for anyone coming forward with an application.

With time lines, nowadays we receive applications. They're officially received and there may be all kinds of information missing, yet near the end of that process when things are looking to be approved by the applicant, there are always comments like, "This has taken me four years," or "This has taken me three years," and "There's got to be some way to shorten this."

We may not have received the complete application or the full information, as we've indicated here, until the third year and we've only processed that information over



a six- or eight-month time frame, but it's lost because the official date on the application presently reads four years ago or three years ago. We may have been waiting for all kinds of studies and things that agencies required, that the region required, to have regard for before we make a final decision.

1020

I think it's a point of contention with the public and with the applicant. They need to know what we should expect of them, and we need to know that we can ask for it through some regulatory means. I think that's the whole purpose of that before we officially receive the application and declare that it is now in process.

**The Vice-Chair:** Mr Grandmaître, do you have a very short question, please?

**Mr Bernard Grandmaître (Ottawa East):** Yes, a very short question, Madam Chair. Your number 3, public participation in the subdivision approvals process, you say that you encourage public participation, except that plans of subdivision by the general public should be permitted only when major changes are proposed and that major changes be defined by regulations or by regulation. Can you help me define what a major change would be?

**Mr Paparella:** I can't stress enough how important that is to the region. Right now, when we give a draft approval, it is just that, a draft approval. Prior to registration of a document, of a plan of subdivision, there are a number of minor changes that occur. What I mean by minor is, there may end up being a lot line shift or a tangent of a road might change from 40% to 50%, so some alignments change.

Based on the present proposed legislation, those require further notice again, and we don't feel that is important. A major change to me would be something like a street is deleted, or a street configuration is totally different, or the lot pattern is totally different from what was draft-approved, or now from lots it's gone to blocks in the plan. That is a major change.

**The Vice-Chair:** Unfortunately, the time has expired for the Liberal Party. I would like to move on to Mr McLean.

**Mr Allan K. McLean (Simcoe East):** Welcome to the committee this morning. Obviously, from looking at your brief, you've thoroughly looked at this Bill 163 in great depth. If I have 50 acres in Grimsby and tomorrow I decided maybe I should put a plan of subdivision on that, how long do you think it would be before I would have approval?

**Mr Paparella:** That's a difficult question. I mean, it depends on a lot of things. If that 50 acres is presently designated for urban development, if it is properly zoned for urban development, there are a number of processes that obviously would have to be in place.

If those were there and we had received a plan of subdivision for an area that was completely zoned and designated for that form of development in our area, if there are no complications in terms of the process, you could conceivably go through that process in three to six months. If there are some complications, it would take longer. But generally for non-complicated issues that are

straightforward, if everything else is in place in terms of the planning process, it would take about that long.

**Mr McLean:** Did you ever see a subdivision that wasn't complicated?

**Mr Paparella:** Yes, actually, in our area our municipalities are quite good at getting their secondary planning in quite detailed order, and the subdivisions are really quite straightforward.

**Mr McLean:** The reason I asked you that question was, the fact is, a lot of things in this bill—it talks about the 30 days, the 90 days, the 180 days—but before you get to dealing with these specific time limits, there's a lot that's got to be done. I'm wondering how much shorter the process is going to be than what it is today, other than having these specific time limits after the fact that a lot of things have been met, then you put in your 180 days or—the 30 that you want to change to 90, to me, appears to be acceptable.

But I want to ask you, do you think that there's enough public participation allowed in this bill for people to be able to have their say?

**Mr Paparella:** With some of the changes we've proposed I think there is. In our process it's very important that the public participation happen and occur at a very early stage in the pre-consultation. It should happen at the official plan stage, at the secondary plan stage. If they are detailed enough, everyone's views are known at that time.

By the time you get to a subdivision, you're really dealing with technicalities, not a form and type of development, because you already know what's going to happen if you've got detailed secondary planning. Therefore, you end up in a situation where you can basically move that subdivision through a lot quicker and you don't need the kind of participation you would want and expect at an earlier stage.

In our area we'd like to see that come out as early as possible, and with these kind of time frames, I think it helps us to give everybody a perspective of when that should happen and we try and encourage it to happen as early as possible. The earlier it happens, the quicker the processes at the end are going to be and that includes site plans and subdivisions.

**Mr McLean:** The question was already asked with regard to duplication being avoided and streamlining achieved by not subjecting plans of subdivision to further public review. I hope that you're saying it has been approved subject to certain little modifications.

**Mr Paparella:** That's correct.

**Mr McLean:** Is that the area you're zeroing in on?

**Mr Paparella:** That's correct.

**Ms Christel Haeck (St Catharines-Brock):** I'd like to follow up on Mr McLean's point regarding number 3 in your presentation. I guess my concern arises out of some things that have happened locally. You talk about subdivisions, but the fact of the matter is that from my dealing with constituents, they really and truly want as much participation as they possibly can have. Even when you're talking about a secondary plan, I think that really neighbours change, the nature of the neighbourhoods



change. The nature of planning over time has changed. We're not approaching it as we did in the 1950s any more, we are definitely trying to be, I think, a lot more holistic in the approach.

My concern would be that in limiting public participation only to major changes, you're really not getting a full sense of how that neighbourhood thinks at that moment in time. I'd be happy for your reaction to that.

**Mr Paparella:** I think as I explained before, the minor changes I'm talking about are literally small line changes of a foot or small amendments to the tangent in a road. If you are making a significant change to that subdivision, clearly it's not our intent to avoid any public participation. We just see that it could really complicate and delay the formulation of that plan and the approval of that plan for no significant reason.

I think that's the point we want clarified, that if there are a number of things that we can clarify and identify in a regulatory sense as to what's minor and what's major, then we're much better equipped to deal with it at the local level, and keeping in mind, we're at an approval level—where we are, we have a two-tier system—so the local municipality generally has a plan of subdivision and a zoning bylaw before the public at the same time.

In our municipality that happens virtually 100% of the time. They're not separate processes, even though when we receive the official plan or the zoning bylaw or subdivision we deal with them separately. At the local level in our region, they deal with them concurrently. If the zoning and the subdivision are there at the same time, that public participation you're concerned about is occurring and the views are expressed at that point because it's fairly close to the end of the process when physical building is going to occur, so a lot of the changes, surprises, are already out in view and the public have had an opportunity to present their opinions.

I think the local municipality has done a lot of the work that it needs to to get all the public input. At our level we're looking basically to streamline it to a point where we can approve the subdivision quickly, based on that input that was already received at the local level.

**Ms Haack:** I'd love to pursue this point, but I know there are other colleagues that want to raise some very good questions, so I'll defer to them at this time.

1030

**Mr Jim Wiseman (Durham West):** Thank you for your presentation. You've raised some interesting points, and I do have a question where you could perhaps help us. In your number 6, where you talk about the Environmental Assessment Act-Planning Act joint process, you say that this bill doesn't give you a specific way of how this dual process is going to work and you ask that you be given more direction as to which specific parts of the process could be combined and so on. Well, here's your opportunity. Why don't you give us some of your ideas about how you think that this might be able to work and then we'll have something that we can work from?

**Mr Paparella:** I think in this situation there are a number of things I have in mind, one specifically that I think would help all processes. With the EA process

presently, there is a requirement for notification of the public. Those notification provisions can be combined with the planning provisions for notice for an official plan or for a zoning bylaw or for a plan of subdivision.

If we are advertising at a local level or at a regional level for a particular planning document to be approved or for public participation, at the same time right in that same statement in the paper you could say this is also a meeting for the EA act for a particular facility, whether it be a major road or a major sewer, and it also meets the requirements of the EA act.

Rather than having to go back and have another meeting and have another notice put in, that's one process that could be combined and all the same players could be at the same place at the same time discussing not only the approval of the official plan or a zoning but also the EA process.

I think that's one step that I know I've been discussing with all our member municipalities and they are quite interested and excited in pursuing that. Once again, we have to identify those projects that are subject to EA very early on in the planning process so that the two processes can dovetail and we reduce duplication in the whole matter.

I think there are a number of other things we could do as well. Giving the applicant the choice of pursuing his own independent EA approval, which means that he's on his own or combining it with us, early on in the process he has to make a choice. If he chooses to have a joint process, then it's jointly provided for in regulation with an OP process or with the subdivision process or with the zoning process.

I think if that option is there for us, a lot of municipalities would take that because it not only helps us improve public participation, it also helps us be more involved as a public agency in ensuring that those aspects of the EA are identified early on and are incorporated into an official plan policy or a secondary plan policy or a subdivision condition or a zoning even.

So having it left the way it is now, basically it requires the applicant to go ahead and do his own process independent of ours, if he wishes, and I think if he had the option to join in with us, it would streamline things for both of us and provide better public participation for all concerned.

**The Chair (Mr Rosario Marchese):** Thank you, Mr Wiseman. We're running out of time. Mr Hayes would like to comment on some comment that was made earlier by way of clarification.

**Mr Pat Hayes (Essex-Kent):** Yes, thank you, Chair. On Mr Curling's question dealing with the time frame, and of course you've made that one of the proposals here, just for the benefit of the committee and yourself, Mr Paparella, the legislation does provide for the preparation of a regulation that will set out what constitutes a complete application. So we will be certainly addressing that concern with regulation and it'll be favourable to your recommendation.

**Mr Curling:** You're saying it will be in the regulations?

**Mr Hayes:** That's what they're requesting, yes.

**The Chair:** Mr Paparella, thank you for taking the time to make your submission and to appear before this committee.

**Mr McLean:** Mr Chair, could I just ask the parliamentary assistant a question of clarification?

**The Chair:** If it's quick because otherwise we'll run way out of time.

**Mr McLean:** Yes, just very quick. Are volunteer firefighters covered under your conflict-of-interest guidelines?

**Mr Hayes:** I don't think they are.

**Mr McLean:** I was reading this last night as my bedtime reading and that's when I came up and found that they were.

**Mr Hayes:** No, they're not.

**Mr McLean:** Page 12 of appendix C.

**Mr Hayes:** Volunteer firemen are not employees where they would fall under conflict-of-interest.

**Mr McLean:** You're saying they're not?

**Mr Hayes:** If you want, I will let Mr Sidebottom address that, if I may, real quick.

**Mr Peter-John Sidebottom:** There is a specific exemption in the legislation for members of council who also serve on the volunteer fire department. There is a specific exemption in section 3 of the act which says that if your interest solely arises as a member of a volunteer fire department, that interest does not in itself cause you to have to declare an interest and then not participate in the decision-making. So a specific exemption is provided and I can give you the section number later, if that's your wish.

**Mr McLean:** Thank you.

ROB COPELAND

**The Chair:** Mr Rob Copeland, you have 15 minutes for your submission. If you would like members to ask you questions, leave plenty of time for that. Otherwise feel free to do what you like.

**Mr Rob Copeland:** I was kind of interested in that because I'm a volunteer firefighter myself and I'm glad you raised that point.

My name is Rob Copeland and I'm a resident of the village of Queenston, which is part of the town of Niagara-on-the-Lake. I've asked to address the standing committee on Bill 163 because in the last couple of years I've developed an interest in the municipal planning and development processes.

To put it into perspective, until moving to the village of Queenston about eight years ago, I was like most average citizens. You're either intimidated or overawed by the planning processes, the boards, the guidelines and so on and so forth. Either that or you don't care enough about it and you're content to leave it to the local levels of government or the politicians, or even if you have a concern, you know, you suffer from that syndrome—you can't fight city hall, you can't fight Queen's Park and so on and so forth. That's kind of where I was.

Then I moved down into the village of Queenston, a

small, little village, historically significant. It's got a great deal of character, a great deal of ambience to it. Even though it's changed over the years, it's kind of been allowed to evolve, as a village should, instead of being radically transformed overnight by improper or oversized development.

There was something about getting down in that village and getting involved in village life that does make you want to get involved. I joined the volunteer fire department. I've become active on the Queenston community association, which is basically the unofficial town council of the village. I got roped into being president of it for three years there, and that's where I got involved in certain things that got me to where I am here today before you.

Without going into details, basically in 1988 there were two things that happened down in the village which eventually presented a threat to the village of Queenston. First off, a sewage system was installed. It was to service the existing houses and any infilling within the community improvement area boundary, or so we were told, and we had no problem with that.

Secondly, the first draft of the town's new official plan was presented to us. We had a look at it, and there were no problems with that. It satisfied it with regard to densities, with designations and the location of the urban boundary.

However, by early 1990, we discovered that the council of the day suddenly found out that that sewage system could handle quite a larger capacity than originally intended and, with this as their criterion, they changed the official plan. They moved the urban boundary to include a further 60 acres. They gave it a residential designation and a density of five houses per acre. That would have more than doubled the size of the village overnight.

**Mr Wiseman:** How many houses per acre?

**Mr Copeland:** Five houses per acre, so with 60 acres, you're looking at approximately 300 houses. That was done without any direct consultation, like coming down to the village of Queenston and talking this over. That isn't a minor change; that's a very major change.

Through the association the village began to fight. It took us four years to try and stave this off. Eventually, this past spring, we were able to convince the council of the day to alter or modify the final version of the official plan to see to our demands. That official plan is now before the minister for approval. The only thing is, we know as well as everybody else the fight's not over yet. The developer who purchased 30 of those acres in question has asked for an OMB referral, and we know what we're up against in that respect.

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After going over some of the revisions and amendments to the various planning acts that this Bill 163 recommends, I find as a regular citizen I've got some concerns and I've got some comments I'd like to make.

The first concern I have has to do with proposed changes to the Planning and Development Act, specifically the revision that says it would eliminate municipal



advisory committees. I'm asking you because I can't really find any clarification: Does this include committees such as the local architectural conservation advisory committee?

*Interjection.*

**Mr Copeland:** It doesn't? Okay. Anyway, I feel that a committee like that is extremely valuable and important to a town such as Niagara-on-the-Lake. What you have there is a committee made up of professional volunteer people with expertise in an area that your ordinary or your regular town council person is not going to have the background to be able to pronounce upon decisions effectively without some kind of advice from people such as them.

Then along with that, I'm asking you, why not have municipal advisory committees made up of concerned and informed citizens to help with areas such as planning which are contentious in any towns? Prior to regional government, my understanding is that the town of Niagara-on-the-Lake put together an official plan in 1970 and they had input from local citizens on it. There was a committee made up.

Now during the life of that official plan they didn't have a lot of problems with it. But if you look at what's happened in the last six years with the troubles that the two councils had in trying to get through this official plan and the various versions of it that've come along, you can see that there's something wrong with the process. I think that something like that could help to alleviate it.

The revision goes on to say, "The minister is required to give the public an opportunity to participate in the preparation of proposed development plans." Public meetings are good and, if there's the sentiment that you're going to give more public participation, that's fine. But still for the average citizen the whole process is too confusing, too intimidating, and I speak from personal experience on this. It's not a lot of fun trying to go before council and try to figure out what's going on.

An established committee of citizens working with the council could be charged with communicating to the average citizen in layman's terms what's going on, explaining the process to them, explaining the recourses they have. This could avoid a lot of potential problems and a lot of bickering at the council level between residents and the council and where it carries on from there. Again, if you knew what has been going on down in Niagara-on-the-Lake over the past six years, you'd be aware there's a problem down there.

A second area of concern I have is that the various planning acts, even with the proposed revisions, don't seem to adequately address the issue of heritage conservation, and this is a big-ticket item down in the town of Niagara-on-the-Lake. Heritage is one of our main assets. When I say "heritage," I don't mean just our old buildings and historical sites. I'm talking about the natural areas, the open spaces as well as the large traditional agricultural base which is the foundation of the area's character.

All these elements together combine to constitute what is essentially the heritage of the town of Niagara-on-the-

Lake. I'm afraid that even though there are references to the protection of natural features and agricultural reserves and items of architectural and historical interest are mentioned, it's not going to be enough to adequately protect the unique situation we have down in Niagara-on-the-Lake, and I'm certain there are other areas, towns across the province as well.

The reason is that, to me, it looks like the act is set up to be too generic. Everything is applied the same way, all across the province the same way. Rules and policies are applied in such a way that a ruling based on an issue in the old town of Niagara-on-the-Lake could be the same thing as downtown Hamilton. There appears to be no allowances for recognition of unique areas of the province which should require special consideration.

The acts appear to paint the province with the same brush all the way across the line, and therein lies the problem, because what I see, the developers will walk in, they know all the rules, they know all the regulations and they consistently force their will upon the residents and on councils without regard to how their projects will affect the distinctive qualities of the situations. They know how to play the game.

**The Chair:** Mr Copeland, sorry to interrupt you, but there would be time to have the members ask you one question for each caucus. Otherwise, if you continue we won't have time for questions. I wanted to leave that option available to you.

**Mr Copeland:** I've got a couple of minutes left and that's it, okay?

**The Chair:** Very well. Go ahead.

**Mr Copeland:** I and many others in our town feel the act should reflect the needs for such areas and contain a section to deal with them. Further guidelines and restrictions should be set up to give these localities more protection from people who want to cash in on the qualities of the town which give them their value in the first place.

Our local MPP, Christel Haeck, has recently presented a resolution to the Legislature asking for a special planning area to be created which would include the old town and the village of Queenston. I feel that zone should be expanded to include the entire municipality of Niagara-on-the-Lake.

Some of the local powers that be feel threatened by this resolution; they feel it is a threat to their control over local planning affairs. As I see it, they don't have very much power at the end of it when it comes right down to it anyway over planning. Many residents don't feel threatened by this resolution because they kind of view it for what it is; it's an invitation to dialogue to discuss a situation where there are a lot of problems.

If this resolution were handled properly and if a bill were drawn up to support it, I feel it could actually give more control to the local towns and the citizens over the planning, the parameters that have to be set up naturally in the guidelines by Queen's Park. But if its administration were left to the local council and a citizens' advisory committee, then it could conceivably give us more direct control over planning, which is a very important matter.

Basically, that's all I'd like to say. Thank you for allowing me the chance to present my brief.

**The Chair:** Mr Copeland, we would have liked very much to have the members ask you questions. I know Ms Haeck was first on the list. But in order to keep to the tight schedule we just won't be able to do that. We regret that but our schedule is very tight.

**Mr McLean:** Can I ask for clarification from the parliamentary assistant, Mr Chairman?

**The Chair:** All right. Mr Copeland, thank you very much for taking the time to appear before this committee. I'd like to call Mr Robert Forbes. As he comes up, Mr McLean, if there are quick questions and quick answers we can do that. Otherwise, it's going to be very difficult for our schedule.

**Mr McLean:** My questions are always very quick. The problem is, the answers are sometimes not so fast.

**The Chair:** There you go. So perhaps we shouldn't ask them.

**Mr McLean:** But I'd like clarification on this bill.

**The Chair:** Okay, hold on. Mr Hayes, I beg your pardon but there's a quick question for you.

**Mr McLean:** Mr Hayes, the question that I have for you as parliamentary assistant is, could you clarify why one of your colleagues would present a thing in the Legislature? Is it not covered under this bill that the people could have the say and have these additional supplementary plans put on? Why would a member present a separate bill if it's going to be—is it not covered under this?

**Mr Hayes:** I'm not familiar with the bill.

**Mr McLean:** Is it covered under the bill, what we're dealing with, what she wants to do?

**Mr Hayes:** Do you want to ask her what she wants to do or ask me what she wants to do?

**Mr McLean:** I just want clarification on the bill.

**The Chair:** All right. You've asked a question. I'm not sure there is an answer. We'll have to move on.

ROBERT FORBES

**Mr Robert Forbes:** Mr Chairman, members of the committee, I have delivered to you my formal submission, which contains my credentials in appearing before you today, the limitation on my presentation to you and as well a number of concerns of mine respecting the detail of the bill before you. In that regard I'm specifically referring to the amendments as they relate to the Municipal Conflict of Interest Act, as it's now called.

My concerns are limited to the future interpretation of the bill before you. I raise them at this time as my attempt to reduce the incidence of inadvertent breach of the act you ultimately pass and the occurrences of errors of judgement. It's clear from the history of the amendment process in this matter that there is a great deal of concern respecting the manner that these excuses, inadvertent breach and bona fide error, have been allowed by the courts. However, I would suggest to you that there have also been a number of cases where aldermen, school trustees and the like have come before the courts and that indeed the excuses are excuses that many, if not all, of us

would have accepted in the circumstances and deserving of some compassion.

It should also be noted that the courts have recently begun to take a somewhat stronger stand in this regard. I'd also like to note, and I think it is missed an awful lot of times, that often the true penalty in these matters is the court cost incurred by the official who's "charged," and I put that in quotes because of course it's not a criminal provision.

I would note that while in one reported case the alderman indeed lost his seat and was barred from holding office until after the election to follow, perhaps the true test of his penalty could be seen in the subsequent taxation of his costs, where he was ordered to pay to the applicant an amount of approximately \$30,000 for the applicant's costs in the matter, not including the costs of appeal. These costs appear to have been on a party-and-party basis, so you can expect that his own solicitor's fees and disbursements would have been substantially more, and he still faced the appeal costs.

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I cite the above example not out of sympathy for the official involved, because on the facts of the case it was particularly a bad circumstance, but to establish the upper range of what a local official can face in these matters. My own estimate of the lower end is \$10,000 without costs being ordered against him or her.

Nor do I make these points as argument to encourage the return of the former excuses, but to suggest that care be taken to ensure that the act resulting from your deliberations be as clear as possible and to suggest that there are ways in which the effect of the deletion of these excuses may be moderated for the truly deserving litigants.

As such, perhaps I might simply skim the comments which I have formally presented to you. My background as set out in the formal paper before you to the limited extent that they're there relate to my history as an alderman, a councillor in the city of Burlington and the regional municipality of Halton. In fact I'm an author of one of the two books that have general distribution with respect to municipal conflict of interest and I'm now in the process of rewriting it. Accordingly, I'm partway through, but only partway through the preparation of the writing. My interest is confined to the detail and not to the policy decisions which you're making.

The first of the items I'd like to draw your attention to, but very briefly, is the definition of "committee." I suggest to you, and you might have your people look at it, that the way that it's drafted may result in Christmas gifts, personal gifts becoming within the realm of it once it gets in front of a court. The matter could be quickly dealt with simply by separating it off in commas.

My apologies. I've gotten ahead of myself. I was dealing with another. The definition of "committee" deals with the question of whether or not you're bringing into the realm committees that are consisting wholly of members of boards or whether or not you're dealing with committees such as local architectural conservation authority committees where you have both members and



the public in place. If it's your intention of bringing in the mixed committees, then I think you should be adding to the clause a provision that clearly states that mixed committees are to be brought in and, if not, then I think you should be putting in the word "wholly" in order to deal with it.

Imputed interests, subsection 2(3): The section imputes a pecuniary interest in a member in certain circumstances where the member has a relationship. In some cases the member has to know that the body that he's imputed into has a pecuniary interest, but in others, particularly clauses (a) and (d), either the knowledge is not necessary or, in case of (d), it's not clear whether the knowledge is necessary.

Clause (d) requires that the member know that the relationship exists, but once he knows that the relationship exists, it's not clear if the knowledge must extend to the existence of the pecuniary interest that the corporate entity has that the family member has an interest in.

This is particularly significant when you realize that the excuse of inadvertence or bona fide error have been removed, and the matter may be clarified by an amendment along the lines of (b) and (c) if it's intended that knowledge is required.

Deletion of inadvertence or bona fide error of judgement: I understand the purpose of the deletion and I'm not arguing with the purpose of deletion, but I would point out that there have been a number of cases where most, if not all, would agree that the member was not deserving of punishment and the provision has been helpful in the interests of justice. Some consideration should be given to dealing with the fact that it is being removed.

One area is perhaps in the commissioner's discretion. The commissioner clearly has a discretion not to proceed. If in fact it's your intention that the commissioner bring into his consideration the question of whether or not the alderman or the school trustee or the like has in fact done it accidentally or as a result of not understanding the act clearly, then that would be one way in which the deletion could be somewhat smooth.

However, I would point out that even if the commissioner has that authority, the individual complainant still has the ability to proceed in the prosecution under the provisions of the bill as it's presently drafted. Accordingly, an alderman or school trustee who's breached the act, but in a relatively innocent manner, may be required to be punished, even though in a nominal fashion such as a one-day suspension. But once he's in that position, the real punishment will be the question of cost that the alderman or the school trustee has to bear.

Gift provision, subsection 5(1): This section raises the concern of simply where the commas are. You'll see that I've set out the provisions of the Members' Conflict of Interest Act, which is better drafted. If that section stands the way it does in the bill as I've read it, I believe as a practising lawyer that it has the possibility of being misinterpreted by the courts as applying to Christmas gifts and the like. It's a very simple reference, but perhaps you'd take it under consideration.

Commissioner's discretion, subsection 8(8): Under this section the commissioner clearly has the discretion not to prosecute an action. However, the factors affecting that discretion have not been set out in the bill. Given this omission and the history of the deletion of the inadvertent and bona fide error provisions of the present act, it may be that the commissioner will feel compelled to prosecute in such circumstances.

I again note that the answer that the member may now face only a nominal penalty of a one-day suspension does not address the real penalty in such circumstances: the costs of the action and the inability to insure against such costs.

Appeal section, subsection 10(1): The section as drafted would not appear to allow an appeal as to sentence. I suggest to you that it would be in the interests of all concerned that the appeal courts have an opportunity to set up over a period of time a standardized reaction to the kinds of sentencing that can occur.

Disclosure of information, sections 16 and 17: I merely point out—with no criticism, but since I was looking for it—there was no penalty set out that would, to my mind, lead to the Provincial Offences Act and lead to a fine of not more than \$5,000. Needless to say, the courts would not be allowing the maximum fine, but I simply ask if that's what is intended.

Insurance, section 17: The insurance provisions of the act have essentially not been changed. However, the omission of the inadvertence or bona fide error provision has effectively altered the insurance provisions. It's my understanding that the insurance industry has interpreted the provisions of the present act as permitting insurance against all cases, except those where a penalty has actually been imposed.

To those who would suggest that the reduced penalties provided by the bill act as a replacement for the removal of these two exemptions, I'd point out again that the real penalty is the high cost of litigation. A member would, in my opinion, be well advised to set aside a substantial sum of money to defend himself or herself against such an action. While it is impossible to predetermine the costs, which will vary due to the vigour with which the action is prosecuted or defended, a sum of \$10,000 or more could well be expected.

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The member who finds himself or herself in contravention due to true inadvertence, such as a simple failure to know that his partner has an interest in a matter before council, would be devastating to most members. The same can be said for the members who made a decision to participate which turned out later to be ill founded but which was an honestly held view of the particular member.

Financial disclosure statement, clause 6(1)(a): If you disregard that, that was an inability on my part with the computer resources I had to find 210.1. I've had an opportunity to find that from P-J. Thank you.

Definition of "board," subsection 2(1): The drafters of the bill have chosen to abandon the definition of the present act in favour of a reference to the definition



contained in the Municipal Affairs Act—section 1, “local board.” This definition is more restrictive in its detailed listing of the boards included. It does not include such boards as children’s aid societies, committees of adjustment, conservation authorities, courts of revision, land division committees and many more that were under the old act. It does, however, then provide a general description under which some of such boards may be included or may not be. This leaves the individual to make a decision about the applicability of the legislation to himself or herself. I suggest it creates more uncertainty which will then lead to the question of whether or not the person inadvertently or by a bona fide error simply breached the act.

I’d suggest that the list of boards be set out in the bill in a similar manner to that of the present legislation, with the deletion of the general description set out at the end of the definition. In this manner, certainty is added to the legislation which will provide that bona fide errors are not as readily available under that section. At the same time, the provisions of clause (b) permit you flexibility by way of inclusion of certain boards by regulation.

Mr Chairman, those are my comments and I thank you for the opportunity to make them.

**The Chair:** Thank you, Mr Forbes, for taking the time to present this brief to this committee.

#### ONTARIO CATTLEMEN’S ASSOCIATION

**The Chair:** We invite the Ontario Cattlemen’s Association, Mr Jim Magee and Mr Peter Doris. Welcome to you both.

**Mr Jim Magee:** Thank you. Good morning, Mr Chairman, honourable committee members, ladies and gentlemen. We thank you for the opportunity to come here today to speak for the Ontario Cattlemen’s Association.

My name is Jim Magee and I am here today on behalf of the OCA to bring comments forward on Bill 163. I am a beef and cash crop farmer near the village of Drumbo, east of Woodstock in Oxford county, and I am a member of the Ontario Cattlemen’s Association board of directors and a past president of the OCA.

For your information, the Ontario Cattlemen’s Association is the representative organization for Ontario’s 40,000 beef farmers. OCA has 49 county and district organizations affiliated with it, spanning the entire province from Kenora and Cochrane in the north to Prescott and Glengarry in the east, to Kent and Essex in the west. Farm-gate receipts from the sale of cattle and calves accounted for a little more than \$1 billion to Ontario farmers in 1993. We have a particular interest in land use planning because many of our members farm on environmentally sensitive areas.

Let me preface my comments on Bill 163 by stating that Ontario cattlemen support the concept of municipal planning and a process that is open, accountable and fair to everyone, including the land owner. As you are probably aware, many Ontario cattlemen, along with many other people in Ontario, have become concerned about rural land use issues. The concern with land use issues is manifested through the designation of land as

wetlands, areas of natural and scientific interest—or ANSIs—endangered species habitat, landfill site selection and other restrictive designations. Often the common denominator is the frustration of the land owner and the realization that his or her land has been redesignated without their prior knowledge or consent. These designations often reduce the value of the property and restrict the ability of the land owner to wisely use their land.

I’d like to talk for a moment about my own situation which has personally happened to me, and this is typical of many other people around the province. I only very recently found out that my land, which we have grazed for over a century, has been declared to be a class 1 wetland and an ANSI. This was very quietly going into the planning office in our county, and if it had gone through the official plan, I would have been out of business. I would no longer have been able to use that land. There was no consultation with me; this simply happened very quietly behind my back. We have woken up to what is happening now. We don’t have so much of a problem with the policy statement but rather with the way it is being carried out.

Specific comments related to Bill 163: There are three principles which Bill 163 is based on according to a May 1994 press release from the minister:

(1) Municipalities will be given a greater role in land use planning and development approvals.

(2) The streamlining of the planning process will permit environmentally sound development proposals to proceed more quickly, creating jobs in the construction industry.

(3) The environment will be better protected through a comprehensive set of policy statements.

It is the view of the Ontario Cattlemen’s Association that if Bill 163 is passed in its current format none of the principles will be realized. The following outlines our logic for this statement.

The proposed change in the Planning Act would require all councils and boards responsible for planning to make decisions under the act that are consistent with provincial policy statements. The previous version of the Planning Act required that municipalities and boards “shall” have regard to provincial policy statements.

OCA does not support the proposed change for a number of reasons. It takes away the flexibility of local elected councils and boards related to planning issues and places it in a centralized bureaucratic structure. This point is evidenced in the proposed purpose section to be added to the act where it states, in clause 1.1(b), “to provide for a land use planning system led by provincial policy.”

What is not stated is that local councils and boards will have their hands tied by central bureaucrats using policy statements. We view this change as a coup d’état for the central bureaucrats over the authority and autonomy of locally elected councils. As a result, principle 1, empowering municipalities, cannot happen with their hands tied by the “shall be consistent with” clause. If this change goes ahead, it threatens to widen the rural-urban split on land use issues. The split is evident now as many urban municipalities are looking towards their rural



neighbours as sites for landfills.

With respect to protective designations such as wetland or ANSI, many rural land owners see these designations as the method by which the urban public is expressing their increased interest in wildlife habitat and other natural areas. If their lands are placed in protective designation, rural land owners view this as expropriation without compensation. The problem is compounded when the process for designating these protected areas has not involved the affected land owner. These designations can have a negative value on the property values and some financial institutions are becoming wary about accepting these lands as collateral for mortgages or for loans, which endangers the economic survival of many farms.

I'm aware of a situation that has occurred in the state of Texas where in one county, where they have identified two endangered songbirds, it has resulted in the loss of property values in the hundreds of millions of dollars. We don't want to see a similar situation start to occur in this province.

An alternative is a process where a land owner can enter into an easement with a conservation-oriented group such as Ducks Unlimited as a method to protect and enhance the sensitive areas. The land owner is a voluntary and willing contributor to the protection of the environment. I personally have done this in my own farming operation. I've been willing to sign a long-term agreement with Ducks Unlimited to protect a particular wetland. I think this is a far better approach than doing it through a bureaucratic process.

Another change is that municipal decisions regarding minor variances cannot be appealed to the Ontario Municipal Board if the proposed amendment is passed. While the goal of reducing red tape is applaudable, we view this change as an attempt to appease the municipal boards and councils over their loss of power from the above change requiring their decisions to be consistent with provincial policy statements. Land owners will not have an appeal process for minor variances with respect to land use issues. In addition, there is a provision in the amended Planning Act that allows the Ministry of Municipal Affairs to collect fees from municipalities for processing planning applications. We believe this is another method to offload provincial government costs to the municipalities.

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It has been our experience that centralizing the decision-making process does not tend to streamline the paperwork; it usually adds to it. With a list of the various natural features under protection, it appears that any feature could be categorized as an ANSI and therefore subject to protection. As a result, virtually any development proposal could require an environmental impact study. In the increasingly competitive world we are living in, agriculture considering expansion will find these restrictions stifling and lose the initiative to compete in a global market.

I will comment on the government's attempt to protect the environment through a comprehensive set of policy statements. OCA reminds you that these natural features are still on the landscape today because the previous and

present land owners were willing to manage the land in a manner that maintained or even improved the natural features. However, with restrictive designations to be applied through the official planning process, current and future land owners will not view these natural features as liabilities or assets. This change will not protect the natural features of the land.

To make a comment, one of our members said, rather tongue in cheek, "If someone found an endangered plant on your property, the best thing to do is to get out the Roundup." Now, it's regrettable to take that attitude. She said it tongue in cheek, but at the same time there is some merit in making that statement, if it's going to result in a whole lot of restrictions coming down on you as a land owner.

To go on, while the linking of environmental and planning issues is designed "To protect the quality and integrity of ecosystems, including air, water, land, and biota; and, where quality and integrity have been diminished, to encourage restoration or remediation to healthy conditions," as stated in section A, goal 1, in the comprehensive set of policy statements, it possesses some problems in reality. For example, "Development that will negatively impact on groundwater recharge areas, headwaters and aquifers which have been identified as sensitive areas will not be permitted." "Groundwater" is defined as "subsurface water, or water...stored in the ground...." In addition, "sensitive" is not defined in the glossary of terms. I would remind you that this is the first point of section A, goal 1, in the comprehensive set of policy statements.

A better method to deal with groundwater quality issues is the approach being spearheaded by Ontario agricultural groups, university researchers and government officials. Originally, groundwater was one of the many issues dealt with through the environmental farm plan, led by the farm organizations. Realizing that groundwater quality is a concern in some areas of the province, the coalition decided that specific action was needed in this area. I would say that yes, we do have a problem with groundwater, but this is also something that we've recognized in the agricultural community and we are moving to deal with these problems.

The group has been meeting to discuss issues related to groundwater and formulate a course of action that addresses the issues. With the involvement of farm organizations, we believe that we can achieve a higher level of cooperation with landowners through voluntary programs and appropriate government initiatives. I believe this approach is more proactive and realistic than the approach outlined in Bill 163, which could greatly limit economic activity in many areas of the province.

Goal 2 of section A of the policy statements sets out a process "To ensure that wetlands are identified and adequately protected through the land use planning process and to achieve no loss of provincially significant wetlands." This is a very rigid requirement and does not recognize that the needs of many Ontario citizens may change over time and that the level of wetlands will evolve and change with time as well and may result in the need for human intervention in order to maintain



function of these areas, such as water control structures.

I might comment that we find very odd that at the present time conservation organizations such as Ducks Unlimited that want to go in and enhance and improve wetlands are actually being prevented from doing so because of the present policies of MNR. As we alluded to earlier, land owners were not often contacted through the process of identifying wetlands and therefore feel alienated towards the process. These people are truly in the best position to protect and manage the environment.

A related problem with wetland designations is the wetland complexes and the adjacent areas. Wetland complexes are wetlands that are separated by up to 750 metres. An adjoining area can be classified as part of the wetland complex, bringing with it all the restrictions associated with a wetland designation. Adjacent areas are to the 120-metre buffer which borders the wetland. While agricultural activity is permitted in the adjacent areas, any municipal permits will likely require an environmental impact study. With these difficulties associated with wetland designations and the wide, sweeping protective measures in Bill 163, it threatens to sour the attitude of the affected land owners. If land owners view these areas as liabilities, it would be very difficult to protect these areas with any amount of legislation. As a result, Bill 163 may endanger the environment and threaten the third principle that this bill is supposed to protect.

With the shortcomings that we have just outlined, we believe the three principles cannot be achieved with the passage of Bill 163. There needs to be a recognition of the role of the land owner in land use decisions and the role the land owner plays in protecting the environment while fully utilizing and managing his or her land. While OCA is supportive of an open and accountable planning process, it is our belief that this process is best served through the responsible local governments, which have the flexibility to meet the needs of their constituents. These local governments should not be unduly restrained by rigid provincial governments policies. In addition, the restrictive designations placed on land without the knowledge or consent of the land owner amount to expropriation without compensation. If it is in the public good to protect and designate these sensitive areas, then the public should pay for these areas.

Our recommendations are:

(1) Maintain the provision in the Planning Act that municipalities shall have regarding to provincial policy statements. It reflects the balance between protecting the environment and local autonomy.

(2) All protective designations such as "wetlands" and ANSI should be reviewed and removed unless the land owner initiates the request to have one or more of these designations placed on his or her property. All existing designations should be reviewed and the affected land owners contacted to ensure that they understand the implications of these designations. In addition, appealing these designations to the Ontario Municipal Board is often a lengthy and expensive process. A local appeal process is needed for environmental designations.

Third and lastly, a process needs to be established that recognizes the role and achievements of Ontario citizens

in protecting and enhancing the environment. Easements between the land owner with conservation groups are a good model to protect the sensitive areas and ensure the willing cooperation of the land owners. This process is not fostered through restrictive designations appearing on an official plan. Protection is best achieved with the cooperation of the land owner, and this needs to be recognized.

Thank you for the opportunity to make this presentation and we welcome any questions at this time.

**Mr McLean:** You indicated that you found on your farm a wetlands designation. Who put that on? Was it the county or the municipality?

**Mr Magee:** Neither, the Ministry of Natural Resources, and it in turn forwarded this to our local county planning office.

**Mr McLean:** Yours wasn't the only farm then that was designated as wetlands by the Ministry of Natural Resources, was it?

**Mr Magee:** No. In fact, in our township we called a meeting. We had over 100 land owners come out extremely concerned about what was happening, and most of these people, like myself, did not know that designations had been made.

**Mr McLean:** Are you aware of the set of policy statements that has been approved by cabinet and that, when this bill has third reading, will be part of the bill? You have the policy statements.

**Mr Magee:** Yes.

**Mr McLean:** What is your reaction to the one-lot-per-farm operation for a full-time farmer of retirement age? In your area, maybe you don't like severances or don't want severances, but I would like your views on that.

**Mr Magee:** First of all, I know that the Ontario Federation of Agriculture is going to be coming before your committee. This is an issue that I think they will more properly deal with. Our organization as such has not taken an official stand on it. I can only give you my personal opinion and I'm not sure how much weight that would carry.

**Mr McLean:** Yesterday I asked some questions. I kind of forget really how they came about, but the bottom line was that I thought there should've been something in this legislation that would protect a beef farmer such as you from urban growth encroaching upon and putting you out of business. I don't think there's anything in the legislation that I know of. Is there anything in there that you know of that would allow you to stay in business with encroachment coming upon your operation?

**Mr Magee:** Exactly. We obviously do need that, the right-to-farm legislation, the protection to carry on normal farming activities. We very much need that.

**Mr McLean:** Somebody said to me they thought it was under the Food Land Guidelines, that it was all still covered under that. I'm not sure whether it is or not. Maybe the parliamentary assistant could clarify that for me.



**Mr Wiseman:** That's under the farm protection act. It's the right to farm.

**Mr McLean:** There's nothing in this bill that protects the farmer's right to farm upon encroachment from subdivisions being built beside the farm.

**Mr Hayes:** There are sections in the bill that certainly protect class 1, 2 and 3 agricultural land. There's nothing in the bill that suggests that the urban sprawl is going to go out on to the farm and put the farmer out of business. There's nothing to that. If someone wants to think that way, that is certainly not the intent of this legislation at all.

**Mr Wiseman:** Just on that last point, I thought the farm protection act was the act that sets up the best farm practices, that the Ontario Federation of Agriculture was involved in working out what those best farm practices are and that as long as they are being adhered to, complaints cannot be taken forward by abutting house owners, because they would be frivolous or vexatious in that they knew the farming operation was there prior to them moving into those subdivisions. I'm not sure that it necessarily should be in this bill, but if it's necessary then I think it's necessary to look at putting it into the farm protection act and not necessarily in this bill.

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My question has to do with another aspect of this. In my area, a lot of subdivisions are being built, and they just strip the land and completely destroy the groundwater, a large community which was basically on wells and all the wells just dried up. The groundwater was gone. I think it's important that we protect, that we understand that this can happen. The flow of effluents and pollution into the groundwater is also a major contaminator and something that farmers have to deal with. So I think we have to deal with these things. These things are happening.

I guess my question is that you've gone through a whole list of things that you don't really like about the legislation and about other legislation, about things that are happening. And while you have indicated that you worked well with Ducks Unlimited to preserve wetlands on your property, we know that 85% of the wetlands in southern Ontario are gone and that even in my own community they are being threatened.

If the option isn't to pass laws and to regulate, if there's another option, how do you get the people who are not prepared to accept responsibility? You see, most laws are designed to get the 5% or 10% of the people who will absolutely not participate in proper planning or ecosystems approaches or taking partnerships such as you have done. How do you get these people to recognize that it's a bigger ecosystem out there that they're affecting if they destroy the wetlands and the breeding grounds and all of these things?

**Mr Magee:** There are several points there I'd like to address. First of all, as far as the comment about the loss of 85% of the wetlands and 95% of the Carolinian forest—I've heard all of that—it's also true that 11 million people will wake up tomorrow morning in this province and they're going expect to eat, and that's

where we're growing the food, on that land. That doesn't mean—

**Mr Wiseman:** They're growing more subdivisions than food lately.

**Mr Magee:** But it's also been said that's a good cash crop.

**Mr Wiseman:** A one-time deal, though.

**Mr Magee:** Right. I think it's worth noting that most land owners today are not out there draining the wetlands, and they have a real interest today in protecting them. I think it's very valid to take several approaches to the land owner that it's of benefit for him to protect his wetland, to enter into the conservation agreement with Ducks Unlimited or other like-minded organizations for tax incentives, for property tax write-offs or whatever, and all these things are of benefit and will help encourage the land owner to protect his wetlands.

I think through the environmental farm plan process we're encouraging people to protect their wetlands, and I don't see the drainage going on or the other problems on agricultural land that there have been in the past. Unfortunately, this policy is actually going to encourage people to do it if they have to, to get rid of it before all sorts of restrictions come down, and that's unfortunate.

**Mr Peter Doris:** The other point to realize is that we don't have a problem with wetlands as such, but when farm land is designated as a wetland or has another protected designation put on it without the prior consent and knowledge of the land owner, and this has happened everywhere from the Ontario-Quebec border right down into the Kent-Essex area in southern Ontario and all points in between, we do have a bit of a problem without the land owner being consulted about this, because the land was purchased with an intent to farm it or to do whatever and then all of a sudden without their knowledge they're restricted as to what they can do.

Quite often the restrictions are such that they take the wetland but they also take probably quite a few acres of additional land that is not wetland; it's the upland areas and that. There has to be a recognition that the private property owner has some rights as well.

**Mr Wiseman:** I agree that it is unacceptable for designations to take place in the absence of consultation and discussion. I think that is one of the things I would totally agree with you on, that it shouldn't be done in that way. The wetlands policy, as far as I'm concerned—and I was one of the prime movers behind having it implemented—was not to do that; it was to work in partnership and to have within the policy itself mechanisms for rehabilitation and monetary incentives to do that. So I'm pleased that you brought that up, because I don't think it should be happening in that way and I agree with you.

**The Chair:** Mr Halen, the ministry staff person, would like to give some clarification to the previous question.

**Mr Curt Halen:** Mr Chairman, through you to Mr Magee, I just wanted to mention that currently, under the Food Land Guidelines, there are provisions under a code of practice which you may be familiar with that do provide protection to existing farm operations. In fact,



there are minimum distance separations that are to be adhered to so that if you have an existing farm and a subdivision, say, or a new residential development is proposed anywhere near that, there are formulas that have to be worked out to set the distance separation. So it does allow or provide for a considerable amount of protection for those existing operations, and that is not going to be changed by any of these policies.

**Mr Eddy:** I'd like to follow up on that. It is being affected by the wetland policy, though, I firmly believe. That's my experience.

But thank you for your presentation. You make some awfully good points. I agree with you about the imposition of the wetland policies. It's happened in other municipalities in Ontario, of course, where some municipalities are forced to hold hearings and get into the matter in depth with their residents after the fact. But that's not near good enough. So it is wrong and it is happening and we need to look at that.

The thrust of your paper, I believe, is that rural Ontario is different and the farmers are concerned, and for the most part that is correct. What you're saying is, I believe, that we shouldn't have the one set of rules with all the restrictions and regulations that we're designing for the urban and the suburban and the fast-growing municipalities for the rest of rural Ontario. It is different. It should be treated differently, and I think it can be. I think we need to work on this. This will probably go ahead, but rural Ontario needs to be recognized and we need to do those things. I'm sure you agree and I think you've shown the way, farmers have shown the way, through the voluntary participation in the environmental plans for farms. People are lined up to do that, and that's wonderful, and eventually we'll see all of them.

Do you see that as the solution, to have something different, in line with some of the things you're saying, for rural Ontario? Oxford's a case in point, because Oxford county is to be commended. I think there's less strip development in the county of Oxford than in any other upper-tier county or region in Ontario, from my point of view.

**Mr Magee:** Yes.

**Mr Eddy:** Would you comment on that?

**Mr Magee:** I think this voluntary approach—the gentleman here referenced wanting to protect wetlands. I agree with that. I have the Ducks Unlimited project on my place, so I obviously have sympathy for that, and I think most farmers today do have a strong conservation ethic, but they want to do this on a voluntary basis, without Big Brother overlooking them. So I think the environmental farm plan is going to be a good process.

**Mr Eddy:** Excellent. I think you've made a good point, that people will come forth and are doing it. There will be some who won't in another treatment, maybe. Thank you for your views on this. I agree.

**The Chair:** We thank you for your presentation.

1130

PRESERVATION OF AGRICULTURAL LANDS SOCIETY

**The Chair:** The Preservation of Agricultural Lands Society, Mr John Bacher. Welcome.

**Mr John Bacher:** I will be highlighting various parts of this brief.

**Mr McLean:** Could we have a copy of it?

**Mr Bacher:** Oh, I'm sorry. I thought it was distributed. Okay, is everyone equipped?

In my introductory remarks I will make some reference to the policies that are associated with the legislation, because I think the forward-moving nature of the legislation is quite evident when it's set in context with the new provincial land use policies, even though they're not the subject of discussion today. In particular, I would like to express our society's appreciation for the new provincial policy regarding specialty lands that would prohibit further urban expansions through zoning on to specialty crop lands.

Getting into the guts of this brief, I would first like to begin with the importance of the new language of "shall be consistent with." In this regard, the previous comment by Mr Eddy pointing out, quite correctly, Oxford county's good planning process shows I think some of the problems of the inconsistency by which the Food Land Guidelines were applied around the province. Some areas like Oxford county interpreted the Food Land Guidelines properly and brought their plans into conformity, but other areas just look at this "shall be consistent with" as "What kind of a big deal is this?" and the Food Land Guidelines remained a dead letter.

Often what this would lead to when different planning proposals were actually coming through the pipe would be appeals by OMAF, and you'd get OMB hearings as a result. Generally the OMB would interpret "shall be consistent with" in a way that's not that dissimilar, would interpret the old "have regard to" in a way that was sort of similar to what's now being proposed with "shall be consistent with," but you'd have a lot of unnecessary expense and OMAF's budget to intervene would sort of be whittled away in a lot of unnecessary OMB hearings.

Secondly, as I indicated in this regard with the policies re site alterations, it's sort of appropriate that you're having this meeting here in Niagara Falls, because the Preservation of Agricultural Lands Society has farm members here in Niagara Falls who have found the inadequacy of the existing regulations about illegal fill dumping is a major problem. There is a stream here in Niagara Falls, the Beaver Dams Creek, where fill has been placed into the floodplain in violation of the fill regulations. The great difficulty of establishing proof of a violation under the existing laws makes it very hard to actually remove fill once it's been put there. So we're very pleased with this aspect of the legislation, that it gives new powers in this regard, because what's there now certainly is inadequate. It has even, as the brief points out, resulted in an attempt to have official plan amendments after the act to legalize illegal practices.

The third point is our basic way that we think the bill could be strengthened. I think this is consistent with the basic process that led to the bill being developed. I'm hoping it was sort of an oversight that this feature was not included in the bill. I know there was a lot of pressure to get the new policy statements enacted. I think this led to some problems of fine-tuning with the actual



legislation in how we look at this in terms of a planning reform in the overview sort of way and how it affects food land.

It's very similar to what people who have been involved in food land preservation have called the Oregon model. The state of Oregon's basic approach to food land preservation is very similar to this bill and the associated policy statements. They have a state policy to preserve food land that is enacted in local municipal plans, and there's similar language to "this shall be consistent with," that the municipalities are to incorporate the policies into their plans.

There's one aspect of the Oregon model, though, that is not here. This is where I think an amendment to the legislation would be in order. In Oregon they have a time limit for municipalities to revise their plans to conform to state policy, and that is a five-year period. It is important to have this time limit, or we could have some of the problems that occurred with the old Food Land Guidelines, with some municipalities such as Oxford county conforming to the provincial policies and other municipalities essentially able to evade compliance with the provincial policy. I know that in Oregon this five-year provision has been very effective, that if you look at their municipal plans, all their municipal plans actually are in conformity with the state policy.

I've given an overview of these contents. If you have any questions, I'd be happy to answer.

**Ms Margaret H. Harrington (Niagara Falls):** Thank you very much, John, for coming. We have heard that this particular legislation will hopefully change the personality of the system of getting amendments to the official plan, that it will make this process less adversarial and that there will be more mediation and negotiation between the people involved. I'm wondering if you think this will actually happen in Niagara. I'm hoping that it will.

The other question I'd like to put to you, and then you can comment, is that I've heard planners here within our region say that it is going to be very helpful to have the provincial policy statements clearer and firmer. It will make their jobs easier in dealing with the proponents and the farmers and the whole community. I'm wondering if you feel that way.

**Mr Bacher:** Yes, I think this will happen. I know change in the agricultural policy—the previous agricultural policy would allow certain urban uses if a need could be established. What we found was this basis of need was just a useless provision. It always ended up in actual practice, when you would get the issue of need debated at the Ontario Municipal Board, with the land owner saying, "Yes, I have a desire to locate this facility here." So this means you had this terrible ambiguity in the planning process. I think this package does a lot to take the ambiguity away.

**Ms Harrington:** Could you comment about trying to change the nature of the adversarial process in a planning meeting?

**Mr Bacher:** I think this is all to the good because otherwise parties could end up spending huge amounts of

money at OMB hearings in a sort of winner-take-all situation. I think to avoid this by forcing the parties to compromise before a hearing would probably be beneficial.

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**Ms Harrington:** Thank you. I'll pass it to my colleague.

**Ms Haeck:** Yes, John, nice to see you out. I want to publicly tell all of the members here that the Preservation of Agricultural Lands Society was integral to the tender fruit land protection program that the minister announced back in May, and John has probably gotten a few grey hairs over the last few years trying to see that one through. So I want to take this opportunity to publicly recognize his contribution to something extremely worthwhile.

You didn't mention it here—and I won't get into some of the severance questions, but obviously we all look to Oxford county for some of the good things happening with regard to severances—but one of the previous presenters talked about trees, and I know that's a concern for your organization as well. This was actually the first presenter this morning in his final comment, and he said: "Under the current tree protection enabling legislation, maximum fines are so low that municipal tree-cutting bylaws are incapable of deterring land owners who want to destroy significant woodlots to facilitate development."

Definitely, I read some of his further comments as indicating that they felt, just from the region of Hamilton-Wentworth, that probably the upper tier should have some responsibility or oversight over this particular issue. How would you respond to that kind of concern?

**Mr Bacher:** Well, that's an excellent concern, because I know I was at one OMB hearing and this matter of the regional tree bylaw came up, and the expert witness said the only attempt to apply this bylaw was actually thrown out of court as unenforceable. So I think a regional tree bylaw is seen as a totally useless vehicle. It's a bylaw under the existing Trees Act, so the provincial Trees Act certainly needs to be strengthened.

It's possible that through the same provisions of legislation that are here in draft form that deal with site alteration, there could be some additional powers put there to prevent destruction of trees.

There was one case here in the city of Niagara Falls where a land owner, in order to prevent possible objections to the development of a woodlot, actually had the woodlot destroyed. So this certainly shows the need for the sort of powers you're talking about.

**Mr Eddy:** Thank you for your presentation of your brief. That's an important matter, the preservation of agricultural lands; a very important matter to our future, there's no doubt about that.

I just want to comment on the trees bylaw. I don't understand what's happening in Hamilton-Wentworth, because in the old days in the county of Wentworth, with the trees bylaw they actually fined a developer heavily for clearing land off a table on the escarpment and forced him to replant. It's my understanding the fines go up to \$50,000. I just don't understand whether that bylaw is



outdated. The problem I see with the Trees Act is that it doesn't require all upper tiers to pass such bylaws. It's permissive rather than voluntary. But I'll take a look at that. It's an important item.

The other one is the control of vegetation growth or prevention of the elimination of vegetation, because when lands are stripped—and they are stripped in many cases, large acreages, long before the development's going to take place or is approved—you know what the result is: It ends up in creek bottoms.

What I really wanted to ask you about was these different models that you refer to. You mention the Oregon model, and you're not asking for that, but you mention agricultural land reserve models established in British Columbia and Quebec. I don't know about those. I do know that in Ontario for many years people were saying the only way you're going to preserve agricultural land is to have a provincial official plan setting that out.

Now, it seems to me some of these policies, or the agricultural policy, is in place of that. Whether it's strong enough, I'd like your opinion. But I don't know. Are those other models better than what we're doing here, or how would you compare them?

**Mr Bacher:** We've always had a long-standing preference for the model in British Columbia and Quebec, which establishes an agricultural land reserve, which is essentially a provincial zoning system on significant agricultural lands. Now, although this has been recognized that this is our preference, we've always seen that the second-best approach is this Oregon model approach, which is shown in this legislation.

**Mr Eddy:** I see, and what's being done or proposed to be done in this act is close to the Oregon model.

**Mr Bacher:** Close to the Oregon model.

**Mr Eddy:** Do you think it's going to result in the preservation? Of course, many decisions are made from time to time that eliminate, purposely, a lot of agricultural land, maybe not right at the time. I'm concerned about what happened in Westminster township, where 64,000 acres, a lot of which was prime agricultural land, was added to the city of London. Now, urban municipalities are not noted for preserving agricultural land. In fact, it's a land base for development, and sparse development in some cases, and that causes me concern. Do you have any opinion on that, the preserving?

**Mr Bacher:** Yes. I think what we've found is that the biggest sort of problem in preserving agricultural land has been the use of overoptimistic population projections, and this is sort of a vehicle for urban sprawl.

**Mr Eddy:** Exactly.

**Mr Bacher:** One of the interesting things I see happening in—you're probably all aware there are these implementation guidelines being developed.

**Mr Eddy:** Yes.

**Mr Bacher:** Now, how I would like to see these implementation guidelines developed is that I know the treasury prepares these population estimates, a total population estimate, and that it actually has population estimates for upper-tier municipalities. I think it could be a good process, to my mind, if these estimates became

part of the implementation guidelines so you couldn't have these inflated population projections being the basis with which a municipality would go to the OMB saying, "This is our population estimate based on this expert."

There's a remark from George Penfold. He told me that if you added up all the population projections from the province, you would just get an absurd figure, high. I think this is sort of the way to stop sprawl on good food lands, if we can get realistic population projections being the basis for future planning. Because other estimates such as densities and other ways that are used are usually sort of warped by these population projections.

**The Chair:** A quick question.

**Mr Grandmaître:** Yes, to the parliamentary assistant, Mr Chair. Would this new legislation apply to the newly annexed portion of Middlesex?

**Mr Hayes:** It's certainly not going to supersede any kind of process that's already started.

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**Mr Grandmaître:** But the planning is being done now, Mr Parliamentary Assistant, for this new annexed portion of London, and they're working on their new official plan. Will Bill 163 affect the planning?

**Mr Hayes:** Well, I'm sure that their new official plan, with the guidance of the ministry, will be—

**Mr Grandmaître:** A day or two?

**Mr Hayes:** —pretty close to conformity with what we're planning here.

**Mr Grandmaître:** Because as you know, most of the land that was annexed was prime agricultural land.

**Mr Hayes:** I realize that.

**Mr McLean:** Welcome to the committee and thank you for your presentation. I'd like to start by saying that on number 4 in your brief, the policies "mark a major advance for foodland preservation in Ontario," you talked about urban sprawl and you talked about population density. How is that going to stop urban sprawl?

**Mr Bacher:** Oh, this matter of population projection is quite integral to stopping urban sprawl because generally when you get urban boundaries out too far, it encourages low-density urban development. This generally happens because the municipality has what is seen as an unreasonable population projection. If we looked at the Niagara region, even in the areas that aren't unique fruit land, if these urban boundaries were permanent for 50 years, you would have no need to have any expansion of the urban boundaries. The basic thing that creates sprawl is when you have population projections that are out of sync with reality.

**Mr McLean:** The other area of concern, and you have raised it and I agree with you, is with regard to the five-year limit that you have put on that municipalities or counties should have an official plan.

**Mr Bacher:** That's right.

**Mr McLean:** But there's nothing in the bill that says they have to do that.

**Mr Bacher:** I know. This is where I think the bill should be strengthened, by having this five-year limit,



which they do have in Oregon. This legislation otherwise is similar in spirit to that.

**Mr McLean:** Right. I think that is a major thrust and should be looked at, because I know the county of Simcoe, where I come from, should be initiating an official plan. They should have initiated an official plan before they did a county restructuring. That way, you would have more of a line of where you should be going, if you're going to restructure. If you have an official plan, then you know where you're at.

**Mr Bacher:** That's a very good point, and I think in the past some of this controversial matter of municipal restructuring could have been avoided. It seems that almost sort of a back way to get better planning policies is to have a restructuring.

**Mr McLean:** Right. I thank you for your brief. I agree with many things that you've said in it. Thank you for appearing before the committee.

**The Chair:** We thank you as well, Mr Bacher, for taking the time to present your brief to us.

**Mr McLean:** Mr Chair, I'd like a clarification on those questions that I'd asked with regard to the fire volunteers. Has the parliamentary assistant got the answer for me? It's on page 12 in the green sheets. I did my homework last night and I haven't got any answers this morning.

#### *Interjections.*

**Mr McLean:** Maybe I could have a clarification on the other question while I'm waiting. Ms Haeck maybe answered, and that was to do with a question I had with regard to a secondary plan or something. I'm not sure what it was. Is it covered in the act, what you were interested in doing? I don't know.

**Ms Haeck:** You mean Mr Paparella's question?

**Mr McLean:** Yes. I'm sorry to ask these hard questions.

**Mr Hayes:** Just on Mr McLean's question, if the member is not on the municipal council, he is exempt. I think even if they are on council, their business with the firefighters—

**Mr Grandmaître:** If he's a volunteer?

**Mr Hayes:** He's volunteer—they would still be exempt.

**Mr McLean:** A committee of management of a home for the aged, is that still part of the bill that you have to fill out your conflict-of-interest if you're on a home management?

**Mr Hayes:** Yes.

**Mr McLean:** But the old legislation, "remuneration, including volunteer firefighters," it says here, "in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled" as a member. It's telling me that the volunteer firefighter, if he's getting any remuneration at all, has to fill out the forms.

**Mr Hayes:** Well, we're telling you that they don't. If you go back to page 9, Mr McLean, it says, "Section 4 does not apply to a pecuniary interest in any matter that a member may have"—

**Mr McLean:** But this is 3(1).

**Mr Hayes:** —"as a recipient of remuneration, consideration or honorarium under section 256 of the Municipal Act or as a volunteer firefighter." So they are exempt.

**Mr McLean:** Okay, thank you.

**The Chair:** This committee is recessed until 1:30.

*The committee recessed from 1157 to 1331.*

DAVID SIEGEL

**The Chair:** I welcome Professor David Siegel. You have 15 minutes for your presentation. If there is time, the members will ask you questions. If we're very close to the 15 minutes, then we'll simply accept your brief as is. Okay.

**Dr David Siegel:** Okay. Thank you very much. My name is David Siegel. I'm an associate professor of politics at Brock University. I have an ongoing interest in the area of municipal conflict of interest and my remarks today will be confined purely to the local government disclosure-of-interest portion of the legislation. As I say, I have an ongoing interest in this area because I teach in the area of local government and public administration.

In 1990-91 I had the opportunity to serve on the advisory committee to the Minister of Municipal Affairs about the Municipal Conflict of Interest Act, so I learned a great deal about the legislation and about the environment at that time when I was able to travel around the province at meetings similar to this and hear from the general public.

I guess the main thing I want to urge you to do with regard to this legislation is, the existing legislation desperately needs to be changed. We've been at this for about four or five years now from the time that we had the first pass at changing the legislation. It desperately needs to be changed. Somehow previous attempts have all gone off the rails, and I hope you would do everything in your power to get this particular piece of legislation through, because I think it's a great improvement, although I'm going to suggest a few ways in which it might be changed.

I think the major thing that needed to be improved was the enforcement mechanism, or I guess I should say the lack of an enforcement mechanism, in the previous legislation. The municipal conflict-of-interest legislation is the only piece of legislation that I'm familiar with that requires a citizen to employ his or her own resources to accomplish some sort of public policy objective. People have to use their own resources to take a councillor to court. You don't do that in a criminal situation. You don't do that in environmental or competition policy. I find it quite incongruous and inappropriate that we expect citizens to do that.

So I think the idea of a commissioner is a vast improvement on the existing legislation because it both provides an easy and informal mechanism for citizens to present their case and to allow the province to take over funding of their case, if the commissioner feels there's a certain amount of merit there, and it also sets up a gatekeeper, because one of the things we heard a lot from councillors when I was on the advisory committee is that



some conflict-of-interest allegations are based on political opportunism; some of them are not very well founded. I think there needs to be a balance there between an opening to allow citizens to make their case and a certain gatekeeper function that allows certain cases without much benefit to be weeded out.

So the strongest thing I would urge you is to go ahead with the legislation, particularly to go ahead with the idea of the commissioner.

The only arguments I've heard against the commissioner were the cost of the office of commissioner, and I think people who made that kind of criticism vastly overblew what the likely cost of this would be, because when we have a mechanism in place and operating, I think we'll probably have fewer allegations of conflict of interest because we'll have an easier mechanism to resolve them.

Counsellors were also concerned that the commissioner might become a bit too aggressive, I guess, in enforcing the legislation, but what I tried to point out to counsellors when they were upset about the idea of a commissioner is that they're already quite vulnerable. Anybody can now make an allegation of conflict of interest against a counsellor. They can go to the media. They can talk about this in the public. They can make these kinds of allegations now.

But people who make those kinds of allegations have an interesting kind of protection, because after they've made the allegation, they can always say: "But I can't take it any further because it's going to cost me a lot of money to go to court. So I'm going to continue to make the allegation, but this will never be tested in court." What I tell counsellors is that the benefit they will have with the presence of a commissioner is that people will no longer have that defence to hide behind. When they make the allegation, they can go to the commissioner and have the allegation dealt with at that point.

So I think the idea of the commissioner is a very good idea, and I think the typical arguments I have heard against it over the years don't have a particular weight in my mind.

One thing I think it might be useful for you to rethink in the legislation is the idea of the annual disclosure statement. I know this has been one of the most contentious points with counsellors. It's something that in a sense I'm in favour of, but I also understand counsellors' problems. I think your first priority should be to get their legislation through, and if this is one of the things you might have to delete in order to get it through, I think, all things considered, when you look at the requirement for the statement of financial disclosure along with the rest of the legislation, it's not really absolutely essential to the integrity of the legislation, because when I look at other things in the legislation, people are required to make a disclosure of an interest at the time that a matter is being discussed in council. That's the case in this legislation and in the previous legislation. The new legislation beefs this up because it requires a written statement of the nature of the conflict, and it also produces a register.

What I'm saying is that when I look at the totality of the protections that are involved here, the requirement for

an annual disclosure of interest may be a little bit less important than it might seem at first glance.

At any rate, I think the major thing I would want to urge you to do is to consider this legislation very carefully. I heard a certain portion of your hearings yesterday and everybody there was talking about the Planning Act, the planning portions of this. So I'm glad that I was on schedule today to talk about this, because this is a very important part of this legislation. I would urge you to go forward with this legislation, to accept this legislation, and you might look at the one comment I had about the nature of the requirement of an annual statement of financial disclosure. But other than that, I think this is legislation that's long overdue for passage.

**The Chair:** Questions?

**Mr Grandmaître:** Yes. Professor, about the commissioner's office, you did say that some municipal politicians were claiming, or are claiming, that it's too costly. I think \$2 million was mentioned yesterday. Am I right on that, \$2 million a year?

**Mr Cameron Jackson (Burlington South):** Yes.

**Mr Grandmaître:** That cost will be, let's say, labelled against municipal government. Do you think the provincial government should be paying the costs of this office or municipal governments should be paying the costs?

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**Dr Siegel:** Well, administration of justice is a provincial responsibility, and of course the legislation for one reason or another was delegated to this committee, which is administration of justice, so I think the provincial government should be paying the tab for that.

I guess another response I would make to this concern about cost is that it's true we're saving money right now by not having something like this, but we're saving money by not enforcing a very important piece of legislation, and while I'm all in favour of saving money, I'm not in favour of saving money at the expense of not enforcing a very important piece of legislation.

**Mr Grandmaître:** I agree with you. As you know, we do have a commissioner at the provincial level. Do you think this person could do both jobs?

**Dr Siegel:** No, I don't. First of all, the jobs will be rather different because the legislation governing them will be different. I think the other problem is that there are 130 members of the Legislature. I'm not sure anybody knows exactly how many members will be governed by this legislation, but if you figure there are 850 municipalities, it doesn't take you long to get to 8,000, 10,000 people might be governed by this legislation. So I think that's impossible.

**Mr Grandmaître:** It's 7,500 municipal. That's it.

**Mr Jackson:** Earlier we had a presentation on conflict of interest, and I appreciate your contributions now in the afternoon session, but I'd like to get a reaction from you about the right of municipal politicians to defend themselves and the costs associated with defending themselves.

There's a case currently going on in Halton region

where a government member's office was actively involved in the kinds of activities you described earlier with respect to promoting an inquest and an inquiry. This individual is now mired in legal bills running \$50,000, \$60,000; \$100,000 may be his ultimate legal fees to prove himself innocent. His political career is in ruin.

Who in their right mind would want to run for public office if there's no appellant mechanism? Certainly the cost associated with errors, omissions and wrongful conflict-of-interest charge insurance is going to run well in excess of the millions of dollars being discussed here. Can you comment in that narrow area of the implications of this new order with respect to conflict review and the appellant rights of an individual who ultimately may be deemed wrongfully charged?

**Dr Siegel:** I think that's one of the things that concerns me a great deal about the way in which a councillor could be harassed by someone in an inappropriate manner. That's what I like about the idea of the commissioner, because I think the commissioner can establish an appropriate balance there. If you take your case to the commissioner and the commissioner says, "No, I don't think you've got a *prima facie* case; I'm not going to continue with it in the court," I would think that any citizen who would take the case after the commissioner said there's not a *prima facie* case there would stand a pretty good chance of ending up being liable for costs, because they've been told that there doesn't seem to be a *prima facie* case, and that would probably produce a certain balance.

**Mr Jackson:** I have a very important supplementary, if I can have the indulgence of the committee.

**The Chair:** If it's short.

**Mr Jackson:** Very short. The supplementary has to do with the principle of law, and that is this notion of, if the municipality were to pay for this commission, it could not be the same municipality that offers the errors and omissions or whatever kind of insurance we're calling it, because they are funded and determinant one and the same. That creates a legal question, and I wonder if you had any feelings about that, that the province would be at arm's length if it were to fund this, whereas the municipality would have real difficulties because it was funding the—

**The Chair:** Mr Jackson, please.

**Mr Jackson:** The amount of insurance coverage that a councillor would get would determine how well he's insulated from the expenses of a future court case.

**Dr Siegel:** Well, I think that's one good argument in favour of the province funding that sort of thing.

**Ms Haeck:** Nice to see you again. We've sat on a panel together talking about women in politics.

I'm rather interested in your remarks regarding the whole issue of annual financial disclosure, because I'm well aware from talking to constituents that frequently, while they see the province as sort of Big Brother and as spending all these bucks, most people aren't aware of how many millions upon millions of dollars are decided at the local level. As a result, obviously there are issues that could be said to be a conflict financially. I would

welcome your reaction to that, and then I would also ask Mr Hayes if he wouldn't mind actually answering the concerns that both Mr Grandmaître and Mr Jackson have put forward with regard to the payment of the commissioner.

**Mr Grandmaître:** He wasn't listening.

**Ms Haeck:** No. He was.

**Dr Siegel:** I think there's a big difference between full-time legislators such as yourselves who as full-time legislators ought to be expected to arrange their private affairs in such a manner to conform to their full-time employment and dealing with municipal councillors who might be making \$3,000 or \$5,000 a year and therefore must maintain their own employment, with some confidentiality possibly in their own employment. I'm just not certain that there is a need for the full kind of disclosure that there is here, always recognizing that there are other times for disclosure. There's a time for disclosure when the matter generating the conflict is at hand.

What I said was, looking at the entirety of the legislation, I think the protections, the safeguards, are there without the requirement for the annual disclosure.

**Ms Haeck:** I think Mr Hayes's point is important, so I won't get into another discussion.

**Mr Hayes:** In response to the question about who will fund the commissioner, as I mentioned yesterday, the government is certainly looking at the means of doing that, and it will be done with government—provincial—resources. The province will be looking at provincial resources, yes.

**The Chair:** Mr Siegel, we thank you for your participation at these hearings today.

STEVEN BALZ

**The Chair:** We invite Mr Steven Balz. Mr Balz, welcome, and please begin as soon as you're ready.

**Mr Steven Balz:** Thank you. I'm appearing today as an individual private citizen who has gone through the process of appealing a zoning bylaw to the Ontario Municipal Board, and I'd just like to give you some of my views on Bill 163 in three specific areas. The first is the provincial guidelines for development, and I'm referring here to the Comprehensive Set of Policy Statements released by the Minister of Municipal Affairs, which I understand is to be administered as part of the package of Bill 163.

Generally we're very supportive of the idea of provincial guidelines, particularly in the instances where they spell out exactly what is expected in the planning process, and that these requirements are spelled out at the provincial level, because they leave less room for differing interpretations between citizens, municipal planners and developers as to what constitutes good planning.

Of particular concern, however, is the area regarding public safety. In reviewing these policy statements, we noticed that there's a reference to public safety but it's a very minimal reference. We would prefer to see guidelines regarding public safety, and particularly the safety of pedestrians, spelled out in the same sort of detail that is given to the protection of wetlands, for example. It's been our experience that as a whole the



planning process tends to overlook the safety of pedestrians and pedestrian movement, and in particular school-age children.

In the case in which we were appealing, it was proposed that a residential subdivision be placed in an area which is isolated from the rest of the urban area by a large cemetery, and it was the municipality's planners who advocated that children walk through this cemetery to get to the nearest public school. This cemetery is approximately one kilometre wide, and the children were expected to use the internal road network of the cemetery to get to that school. There are, of course, municipal roads which children could have taken. However, they lacked sidewalks and it was a very roundabout way for them to get to school.

#### 1350

We recommend that these provincial planning policies set out very specific recommendations regarding the safety of pedestrians and that generally more attention be given in the planning process to the safety of pedestrians, those accessing public transit and so on.

Regarding the delegation of authority to approve draft plans of subdivision, we understand that Bill 163 is going to make it possible that the authority to approve draft plans of subdivision be granted to lower-tier municipalities. We perceive a bit of a problem with that in that because municipal planners and councils work very closely, quite often, with developers—they see the same developers coming up again and again—they form relationships, not only business but personal relationships, with these applicants. That makes it very difficult for a municipality to provide an objective hearing of a particular application.

Added to that, it's been our experience in dealing with local governments and boards and commissions that there is a real resistance for any particular board or council to give up its authority to another agency. For example, it's somewhat unrealistic to expect that a lower-tier municipal council is going to be willing to refer a draft plan of subdivision to the Ontario Municipal Board when it has its own opinion on whether or not that is an example of good planning.

We would suggest that it's imperative that if municipalities are to be granted approval authority, there be a mechanism by which ordinary citizens can appeal the draft plan approval to the Ontario Municipal Board, rather than the current system in which you have to request referral. Other than that, we don't necessarily disagree that it's a good idea that municipalities be given this process, that the municipalities have the authority to grant approval of draft plans of subdivision—just that there be a mechanism by which those who disagree can appeal that decision.

In our situation we had appealed a zoning bylaw. We had also requested that a draft plan of subdivision for the same project be referred to the Ontario Municipal Board. In the Niagara region the region is the minister's delegate for approval of draft plans of subdivision, so we made the request to the region and it was turned down despite the fact that the board of education had made a similar request and we were already appealing the zoning bylaw.

The last area I'd like to comment on is the accessibility of the Ontario Municipal Board. As I mentioned, we did proceed to an Ontario Municipal Board hearing, appealing a zoning bylaw. We elected to do so without a lawyer to represent us, and that was done for financial considerations. We just simply couldn't afford to hire a lawyer to protect what we felt was the public safety.

We had a difficult time at the board. Certainly in my opinion it was not because we were unable to present credible witnesses—in fact, we were—or that we didn't have good evidence. Our problem was simply our lack of understanding of procedure at the board. We weren't able to put together a case in a way in which our evidence and our arguments were presented well. Quite simply, we fell down in the area of presenting our case.

In order to alleviate this sort of problem, I would suggest that it should be considered that there be some sort of third-party funding or intervenor funding, such as is the case with environmental assessment hearings, by which people who wish to appeal a matter to the Ontario Municipal Board are given the opportunity to have legal counsel to represent them. I think the advantages of this would not only be that appellants would get their case heard in a much more effective manner; I think it would also be considerably easier on the board not having to listen to people like myself try to stammer through making a case.

As an alternative consideration, it might be possible to make these Ontario Municipal Board hearings more user-friendly to the public. I don't think the public should be expected to operate as a lawyer in front of the board, to be expected to understand all the rules of evidence that are used in civil cases and that seem to be transferred to the procedures that the board employs.

Perhaps some sort of guidelines could be set down, or some sort of training of hearing officers could be done, in such a way that the inherent disadvantage that the public has in going up against lawyers in a fairly formal level arena could be taken into account. It may also be possible to prepare, to some extent, appellants for board hearings by providing them with much more information. Information could be automatically mailed out to appellants, such as how to present evidence at the board and so on. This would save the board certainly a lot of time in the long run, time spent in actual hearings.

In speaking to other individuals who have attended Ontario Municipal Board hearings and environmental assessment hearings, it's our feeling that our experience isn't always the case, that occasionally people do have hearings in which they do feel that they were able to represent their case in a more effective manner. This is particularly true in environmental assessment hearings. I think that steps could be taken to make that a more universal experience.

That's all I have.

**Mr McLean:** At one time we used to have a user-friendly OMB where you didn't have to have a law degree to go to present your case, but today, when you have the subdividers there, it appears that you have to. I sympathize with you and appreciate what you're saying here, because we had a young lady yesterday who raised

the very same issue as you have raised today. I also have the feeling that we may not have enough intervenor funding, perhaps, in order to allow people to go to present their case. I agree with you. Good presentation. Thank you.

**Ms Haeck:** Hello, Steve. Nice to see you here. Your project in fact revolved around a number of issues. One of them you've outlined—the very clear safety issue. But I know that there was a real concern. From conversations we've had, you've indicated that you would have appreciated being able to be very much involved more at the front end in dealing with a range of natural features that are there, the trees and creek and a number of other things that definitely were part of this project near Emmett Road. Did you want to just make a quick comment about, say, the tree situation and how you would like to see that resolved in the future?

1400

**Mr Balz:** Yes. Part of the lands which were slated for development were publicly owned lands on which there was a mature woodlot. Part of the lands were also privately owned, I should mention. There was a proposed subdivision which would cover both publicly and privately owned lands. There was considerable community support for preserving this woodlot, as it was adjacent to a proposed parkway.

In the Niagara region there is work going ahead to plan a parkway along the Welland Canal. This land was adjacent to that and there was a great deal of interest in seeing that this land be used as a park, as part of the amenities associated with the parkway.

We were, I guess, so aware of the lack of any real legislation or guidelines or provincial policies to protect trees, wooded areas and the wetlands that were also included that we didn't even really pursue that at the board, because we didn't feel that there was enough consideration for protection of those things that it presented a valid planning argument, so we restricted our arguments before the board to the issues of pedestrian movement and traffic movement. Certainly I would be supportive, and am supportive, of any attempts to beef up the environmental aspects of the Planning Act.

**Mr Curling:** Thank you for coming in to present your presentation before the committee. I just wanted some of your comments. You mentioned something about intervenor funding. There are two sides to this. While there is the need for people to have a proper presentation and legal counsel and support in their presentation, it is felt too that once we introduce intervenor funding without some sort of guidelines, it's a huge resource we've got to put forward there for any group that would come in or any individual who would want to come in to make a presentation in that regard. How do you see a control of intervenor funding? Who should get it, do you think?

**Mr Balz:** That concern about people coming forward perhaps with less than serious concerns and requesting intervenor funding is offset by two mechanisms. The first is the changes to the act in Bill 163 which give the Ontario Municipal Board the right to dismiss an appeal without a hearing if it thinks that it is completely without merit.

The other aspect is that currently anybody can appeal any zoning bylaw by simply writing a letter and can hold up the development process for a year or longer. If they feel they don't have a case, they can always drop the appeal before they even get to a hearing, or they can go through a hearing, stumble through it, only to have the board rule against them. In doing so, they are tying up public funds in the sense that the municipality has to appear before the board with its planners and its solicitor and respond to the appeal, not to mention the developer, who has to spend large sums of money trying to defend their application, if that's in fact the case, as it was in our case, where we had a developer and a municipality supporting the bylaw.

There's a great deal of money being spent and a great deal of time being spent currently dealing with what undoubtedly, in some cases, are not very valid appeals. By providing intervenor funding and allowing people to get legal counsel, they'll have a much better idea of whether or not they have a valid appeal. I think in the long run it would make the board a much more efficient operation.

**The Chair:** We've run out of time. Thank you for taking the time to come here today and thank you for your presentation.

#### NIAGARA-ON-THE-LAKE CONSERVANCY

**The Chair:** I would welcome Niagara-on-the-Lake conservatory, Ms Laura Dodson, next.

**Ms Laura Dodson:** Thank you very much. By becoming a member of the Niagara-on-the-Lake conservatory, rather than the Niagara-on-the-Lake Conservancy, I hope I come up smelling of roses; it's quite a different organization from mine. We had a big debate about our name. "Conservancy" is a bit awkward, but we are a conservancy group.

Thank you very much for this chance to appear before you. It's certainly educational listening to what's going on and very, very interesting. I am impressed at the quality of debate, comment and the questions being asked.

I won't go into the introductory part of this. It's just to let you know that we are a very serious and committed group of people in Niagara-on-the-Lake who are deeply concerned about the heritage of this provincial heritage city—also national—and who are very determined to protect that heritage in any way we possibly can, even at great personal expenditures at OMB hearings and so on, such as the one we've just been through. Perhaps I won't need to go through those various parts of the introduction to let you know who we are. Having heard the comments today, I would like to go home and rewrite this, but I'll do my best with what's here.

Bill 163, which makes important changes to the Planning Act, raises many concerns. First of all, it does nothing to protect the heritage of historic areas in the province. We are of course concerned about the heritage of our historic areas, namely, the old town of Niagara-on-the-Lake, Queenston, St Davids and the parkway corridor connecting the old town and Queenston. We're also concerned about the farm lands and so on. We are very



supportive of the Preservation of Agricultural Lands Society, PALS, of which one of the members is one of our directors, and of course we are concerned about the historic farm land there as well, which we think is being very well looked after, we hope, by PALS and by the government.

Secondly, we're concerned about the transferring of approval authority of official plans to the regional council of Niagara from the Ministry of Municipal Affairs. We're concerned that it removes a safeguard in the planning process.

Thirdly, the removing of appeals of minor variances to the OMB leaves the planning process open to abuse.

Fourthly, the adequate provision of a full range of housing is not possible in all communities. The requirement can create inappropriate development. Communities of under 10,000, say, perhaps should be exempt from this policy.

Fifthly, planning committees should include elected or appointed members of the public as well as the elected councillors.

Sixthly, people and groups should not be denied their right to appeal matters to the OMB because they did not previously make their views known orally or in writing.

Seventhly, as for speeding up the approvals process, we in Niagara-on-the-Lake must be on a different planet. Our development approvals are given at an alarming rate. We can't keep up with the pace of development.

To just expand on some of these, Bill 163 requires that only slight attention be paid to the conservation and preservation of heritage in the planning process. The statement that appears near the beginning, "The minister, the council of a municipality...in carrying out their responsibilities under this act, shall have regard to, among other matters, matters of provincial interest such as,...(d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest," is the only statement concerning planning in heritage areas in the bill.

The wording "shall have regard to" and "significant" is open to wide interpretation and gives the policy no teeth. Having been present at many OMB hearings, we realize that lawyers and other experts use such words to sweep aside objections to a development hostile to heritage. The Ontario Heritage Act has been called "a toothless tiger" and so it has proven to be. That sentence doesn't seem to belong there, but I was thinking in terms of the very, very marshmallowy kind of language in the heritage act which doesn't really protect heritage at all, as far as we can see.

The preservation of our built heritage, open spaces and natural areas is totally dependent upon planning decisions, and the principles governing planning decisions in heritage areas must often be different from those governing planning outside historic areas. Heritage areas must be designated as such by the province and should have official plans—perhaps these should be secondary plans in the case of a municipality like Niagara which has several smaller towns of historic importance in it—and/or urban design plans which govern all development, traffic

management, corridors leading to the area, landscaping, tree policies etc, and these plans should be drawn up not just by planners but by planners in consultation with architects, landscape architects, historians and so on, with much and continual consulting with the citizens and elected officials.

#### 1410

Another approach to protecting heritage areas is to have a commission, like the National Capital Commission, the Niagara Escarpment Commission etc, approve all development within a designated historic area. Such a body would meet in the locality and have members from the council of the municipality. This is the type of planning control sought by the Niagara-on-the-Lake Conservancy to stop the haemorrhaging of our heritage.

I might add there that the urgency of our need for serious and rapid treatment of this problem has been brought out of the closet by our very able and courageous MPP, Christel Haack, who has made a proposal in the Legislature to have Niagara-on-the-Lake designated as such an area and have its planning overseen by another tier, like a commission. We'd be delighted to be guinea pigs in that kind of experiment in Niagara-on-the-Lake because we are desperate.

As to the approval of the official plans, we do not believe that the regional municipality of Niagara should be the approval authority in respect of the approval of Niagara-on-the-Lake's official plans. The regional municipality is merely an extension of the local government, and since it is a political body, it cannot maintain a neutral position as does the Ministry of Municipal Affairs. We would expect the regional council to rubber-stamp all official plans.

Also, the procedure for the approving process isn't set out in the bill. Having the region approve these plans would also necessitate the hiring of more planners at the regional level. Official plans are supremely important in making planning decisions and when appealing decisions to the OMB. The Ministry of Municipal Affairs is aware of the importance of wording and so on in this premier planning document. Official plans for historic areas, anyhow, should be approved by the province, which is responsible for provincial heritage.

Minor variance appeals. The removing of these appeals to the OMB is a serious blow to those of us who live in historic towns. Minor variances are sometimes major variances on developments or requests in our heritage district and should entail zoning and even official plan changes and not requests for minor variances. The minor variance route can be taken to expedite or gain approval for a change which is questionable and even prohibited. The council appoints the members of the committee of adjustment and rubber-stamps their decisions. We believe that this change will encourage the misuse of this planning tool and would deprive citizens of their right to appeal what they perceive to be a bad decision. In a fragile heritage district, a bad decision can be very serious in that it can destroy something irreplaceable and set a precedent. We urge the province to reconsider this matter.

We have had experience, by the way, with the OMB,

with minor variances that allowed prohibitions in the bylaws, such as no outside employees and four outside employees, that were approved by the committee of adjustment. Had we not had a chance to appeal those to the OMB, there would have been some very important and dangerous precedents set in the home occupation bylaw and so on, almost destroying it completely.

The provincial policy requiring the adequate provision of a full range of housing. The old town of Niagara-on-the-Lake, to take an example, is very small and cannot meet this requirement. Real estate prices prohibit the provision of even affordable housing. We have no public transportation that would enable people in low-cost housing to reach St Catharines and we cannot extend our urban boundaries since we have water on two sides and protected prime farm land on the other two. The provincial policy requiring communities to intensify development has led to the recommendation and approval of development that is not appropriate to the historic town. We believe that communities with a population of under 10,000, say, should be exempt from this requirement.

The word "intensify" is used constantly in Niagara-on-the-Lake to justify the setting aside of land designations and to increase their return to the developer, while destroying the character and ambience of the old town. Because Mr Sewell said "intensify," our council, which uses this word I think at every single meeting over and over again, approved a 106-unit apartment complex on the floodplain of the Niagara River, right under the ramparts of Fort George. The lawyers for the developer and for Niagara-on-the-Lake argued at the OMB that intensification and the need for all kinds of housing in a community justified the more than doubled density permitted by the official plan and the zoning bylaw on this development. We ask that Bill 163 be amended to exempt small communities from this requirement.

The composition of planning committees. We believe that planning committees should include elected or appointed members of the public. Planning boards in the past included such members and these boards seemed to work well. This practice would allow for more public participation in the planning process.

Appellants to the OMB. The requirement that one who appeals a planning decision to the OMB have spoken or written in response to the proposal could cause the loss of a person's rights. There can be extenuating circumstances that prevent such participation, or the issue's importance to someone could be realized after the time for expressing views had passed. We believe such a measure could prove unjust.

Back over on page 5a there is something that I added: speeding up approvals for development. We, in Niagara-on-the-Lake, a group that keeps a close watch on development requests and approvals, find the pace of these quite dizzying. In a historic town with a very small commercial area, the pressure to expand commercial zoning into land designated residential is very great. Small houses are bought and torn down only to be replaced too often by monster houses, changing for ever the character of neighbourhoods. There's constant pressure by developers to allow the construction of

properties without providing the citizens with sufficient information and detail to allow a proper evaluation of the project, which could impact on neighbours adversely.

Everything in our municipality proceeds apace. At each meeting of the committee of the whole, there are many requests for some kind of development, and at the ensuing council meeting the following week most of these are approved. Some development proposals need to be looked at and discussed with the public at length. Any attempt to further speed the process would diminish the public's opportunities for full involvement in the planning process in their town or municipality. The process is already heavily weighted in favour of the developer, who has an army of experts at hand and who can and does lobby and consult to the point that most decisions are made before the public is even aware of the development being considered. We believe that the public should be allowed to see, discuss and comment on site plans before the council passes the enacting bylaw for a major development or for a building which might not be appropriate in its location.

We feel, therefore, that the planning process should not be speeded up at the expense of the loss of our heritage, as is certainly happening in Niagara-on-the-Lake. Some of us are quite desperate about this great loss and appeal to the province to consider assisting us in this matter before it is too late. There are many who believe that the time has already run out.

As a conclusion, I merely summarize the points that I think are made in the paper. I'd like to just add a couple of things very quickly. One of them is the great confusion that we have experienced as a body as to the legal status of guidelines, proposals, policy. We know about legislation, but there seem to be so many policies, guidelines and so on that are being used by lawyers at hearings and at the council meetings and so on which seem to frustrate us because we don't know the legal status of all of these documents. There are hundreds of them, it would seem. That's one other point I'd like to make.

One other, and I don't know whether it belongs here, that has concerned us is that there is no mechanism set down for the exchange of public land for private land. We've had an experience recently in which waterfront property belonging to the public was exchanged, with a private citizen, for property for a parking lot, and we were told that there was no possibility of even debating that issue. I couldn't find anything in the Municipal Act or Planning Act to deal with that problem.

**Ms Haeck:** Thank you, Laura, for your kind remarks about me personally, but also I think you're making very clear some of the reasons possibly to Mr McLean, who raised the question of my resolution earlier. Since this dear lady is a constituent of mine, I think she can make it very clear as to why my resolution came about.

1420

I just wanted to take a minute to ask, Laura: One of the reasons you folks in Niagara-on-the-Lake have a real concern about minor variances is that the size somehow, for the purposes of these changes, tends not to be so minor. I think you've indicated in some instances that a



project starts off to be a particular size and then somehow becomes double in size. Could you explain the situation involved?

**Ms Dodson:** Yes. In our commercial area there was a minor variance request for eight shops when only four were permitted in a development. A shopping centre was excluded, was not allowed in the commercial area, and the eight shops would have constituted a shopping centre.

This went to be heard as a minor variance. All the indications were, on the material from the town, that only four shops were allowed. The committee of adjustment allowed six, rather than eight, and we did appeal this to the OMB. We had a second case of a very famous artist in town who asked for home occupation in a home and asked for four outside employees. The bylaw prohibited any. In another building it was not allowed by the bylaw—in a garage, three times the floor space allowed. All this was permitted by the committee of adjustment, we appealed it to the OMB and the appeal was granted. So we believe that end runs can be done around zoning bylaws by using this mechanism to obviate the need for a bylaw.

**Ms Haeck:** You'd like to have a much clearer definition of what really—

**Ms Dodson:** Of a minor variance.

**Ms Haeck:** —exists as a minor. It's not, as some would suggest, a simple movement of a line by a foot or something of this sort.

**Ms Dodson:** No.

**Ms Haeck:** In your experience, it has been far from minor. In fact, it has been fairly major.

**Ms Dodson:** Very, yes.

**Mr Grandmaître:** On page 3 you say, "Another approach to protecting heritage areas is to have a commission like the National Capital Commission." I live in Ottawa-Carleton and I pray to God every evening that they should eliminate the National Capital Commission because it's another level of government and a very expensive one.

**Mr Jackson:** There are more Liberals on it, that's why. They had a good six-year lead.

**Mr Grandmaître:** Mulroney did a good job in his appointments.

**Interjection:** He plugged it.

**Mr Grandmaître:** But anyway, putting the appointments aside, it's another level of bureaucracy. I'm not saying they're doing a poor job. They're doing a job, but it's another level of bureaucracy and a very expensive one. I wonder if the people living in your area would approve of such a commission.

**Ms Dodson:** I really intended to bring our proposal. As a matter of fact, Christel's proposal came because we submitted a proposal to the government with a very extensive photo exhibition and so on. We have a legal arm, in our group, of about five lawyers who are members of the conservancy who drew up this proposal after much consultation, and Dr Peter Stokes, the restoration architect, assisted.

We also did suggest legislation that would make this

commission—we believed we could fund it, that it wouldn't have to be a heavy burden. It could be composed of members of the council and some appointed or elected people. I think we could find enough people of stature who would perhaps even volunteer their time for such a commission. We would be delighted to look into that.

We don't think it would have to be costly. It's certainly another level of administration, as it were, but what is there now isn't working. I'm sorry, nothing is working for us and we are desperate. We have people who are frustrated beyond imagination with what's happening in our town. Something has to happen and we were so grateful to Christel for bringing this matter, even if it's just debated, so that people know what's happening in Niagara-on-the-Lake. We are just being destroyed by bad planning, overbuilding, inappropriate development etc so we would like to try something else that might work. We hoped this would.

**Mr Grandmaître:** Are you satisfied with the decisions made by the Niagara Escarpment Commission? Are you satisfied with most of their decisions?

**Ms Dodson:** Yes.

**Mr Grandmaître:** You are?

**Ms Dodson:** Yes. I think it works very well.

**Mr McLean:** My question has to do with: Do you have a heritage committee in Niagara Falls?

**Ms Dodson:** Niagara-on-the-Lake. We have a historical society, we have LACAC, the local architectural conservation advisory committee.

**Mr McLean:** Is there a group that recommends to the province a designation of some historical building or monument?

**Ms Dodson:** Would that be LACAC? Yes, I would think LACAC. They're appointed by the council.

**Mr McLean:** Okay, so there is a group then.

**Ms Dodson:** Oh, yes, some very good people.

**Mr McLean:** What do they do differently from what your group does?

**Ms Dodson:** They are appointed by the council. They review the architectural features of a development and comment to the council, which may or may not accept their recommendations and quite often doesn't.

**Mr McLean:** Right, and what does your group do?

**Ms Dodson:** Our group monitors all the meetings of the council and committees of the whole and makes presentations to the committee and the council when it knows that certain developments are coming up or when they're on the books. We have gone to the OMB. I think if you read the introduction—you haven't had a chance to do that.

**Mr McLean:** Yes, I did, but I wanted clarification.

**Ms Dodson:** So, because LACAC can't, for example, go to the OMB, we are prepared to do that to defend our heritage if we have to.

**Mr McLean:** Thank you for appearing here today.

**Ms Dodson:** Thank you very much.

**The Chair:** Thank you, Ms Dodson, for taking the

time to come here today and presenting your brief.

**Ms Dodson:** You're welcome. May I have permission to send along our proposal, through our member, for the members of this committee to look at?

**The Chair:** Of course.

#### SIX NATIONS COUNCIL

**The Chair:** We invite the Six Nations Council. Councillor John Peters, Mr John McNaughton, Ms Charlene Bomberry and Mr Phil Monture, welcome to this committee. I understand that you have briefs but you don't want to give them out just yet. You want to do this at the end. Is that correct?

**Mr John McNaughton:** Partway through.

**The Chair:** Okay. Begin any time you're ready.

**Mr John Peters:** Good day. Greetings to the Chairperson and all members of this committee. My name is John Peters. My Indian name is ato; keh ro; kweh, elected councillor, Six Nations of the Grand River.

With me today from our claims committee research office are Phil Monture, director; Charlene Bomberry, research administrator; and John McNaughton, our policy analyst for Six Nations Council.

Under the title of non-interference, Six Nations requests that the Ontario government understand that as a nation it is our policy not to interfere with the internal business of another nation unless requested by that nation. Our history outlines this alliance between our respective peoples.

It is with great sadness that I say over the years this alliance has not been respected to its fullest potential. However, if you and your committee so desire, we shall continue and my colleagues will distribute this presentation.

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Just a little background, I guess, while they're going to hand that out. The Six Nations of the Grand River is located on the banks of the Grand River now between Brantford and Caledonia. It is an area enriched with the cultures of many of the province's early settlers and loyalists.

There are nearly 18,000 registered members of the Six Nations, all of whom can directly trace their ancestry to the Onondaga, Mohawk, Oneida, Seneca, Cayuga, and Tuscarora nations. Not all of these people live at Six Nations. Approximately 8,500 live on roughly 45,000 of the original 674,910 acres deeded to our ancestors and their legacy by the British crown in exchange for their alliance during the conflict between Britain and the American colonies. The rest have settled throughout North America, living and working in places beyond what the government of Canada describes as the Six Nations Reserve, perhaps next door to you.

Why we are here: the Six Nations Council, through myself and my colleagues, desires to make known to this committee the concerns regarding its general displeasure with the government of Ontario's treatment of our rights as a first nation and specifically the effects and implications of Bill 163.

For further clarification, we do not speak for any other

first nation, political, treaty or off-reserve aboriginal organizations, nor should this presentation be viewed as part of your consultation process. May the minutes reflect that part. This is not a consultation process.

General concerns: In 1991, the government of Ontario signed with the aboriginal political and treaty organizations and with independent first nations the Statement of Political Relationship, SPR. It was thought that the mutual interpretation of the SPR was to respect the first nations' rights to self-government. We have not seen the SPR reflected in the way that the bureaucracy does business. I should point out that although there have been individuals that have expressed their dedication to the spirit of the SPR, this has not been transmitted throughout the whole organization.

In the three years since the SPR has been signed, very little has transpired in terms of real results. What we have observed is an unwillingness to develop new ways of thinking, an unwillingness to reduce the bureaucratic grip and an unwillingness to try. This brings great sadness to me, as the SPR has the potential to bring Ontario into the 1900s. This is not a misquote. There is a long way to go. That first step has to be taken if our goal of mutual respect is to be reached.

I guess a little definition on respect from us: Respect does not come easy. It has to be earned. Six Nations has been very patient these many years. My generation has fought to gain the respect that your people seem so determined to beat out of us. The following generations will likely not be as tolerant. I don't think there's any question about that. Change is inevitable, and inevitably the greatest change occurs through revolution. Let us make respect the revolution that will allow us and our generation to come to prosper collectively.

These general comments are for your information. Six Nations will continue to observe and monitor your actions or inactions to determine if the government of Ontario is worthy of our respect.

I will now refer you to my colleagues to provide Six Nations Council's comments and concerns in Bill 163. But just before that, what isn't written down here, Six Nations of the Grand River, as we're known now, we are independent. We're not affiliated with the AFN, with the AIAI, with anyone. We're independent.

By no means do we pretend or ever attempt to speak for any other independent first nation, but one must remember that the proper name for Six Nations in our language is "yejihaye; ntahkwah ose kowah." Loosely translated, that means "headquarters". Literally translated, that means "where the council fire burns at Grand River." So "ose kowah," that's "Grand River." In reality, Six Nations is the headquarters—like Ottawa is for you guys—for all the Iroquois of Turtle Island, North America. "Don a yoh" means "I have spoken"; "nyawah" means "thank you."

**Mr McNaughton:** Our comments regarding Bill 163, the Planning Act amendments: Basically, Six Nations Council admires the province of Ontario's wishes to update its planning process. However, we do seek clarification on the intent of your wording so that we may come to a mutual understanding of its implications.



Our number one concern is that in the part III Planning amendments, and its referenced to page 3 of Bill 163, the interpretation section says, "An Indian band shall be deemed to be a person for the purposes of this act." We have three questions regarding that: What is your definition of an Indian band? What parts of the Planning Act affect a person? What is your intent of an Indian band being a person in a singular sense?

**The Chair:** Do you expect an answer this moment, or are you going to go through this?

**Mr McNaughton:** I'd appreciate an answer.

**The Chair:** Okay. Let's see if there is anyone from the staff who might comment on that.

**Ms Linda Perron:** Good afternoon. My name is Linda Perron. I'm a solicitor with the legal branch of the Ministry of Municipal Affairs, and I shall attempt to go through your questions in sequence and perhaps explain some of the background to the wording that was used. If questions arise as we go through, I'd welcome any interruptions so that we can all be on the same track.

You correctly pointed to the first reference to an Indian band which—

*Interjections.*

**The Chair:** Lean closer to the mike.

**Ms Perron:** Okay. Now, the Planning Act, in section 1, goes through this exercise of deeming an Indian band to be a person for the purpose of the act. That is not to in any way redefine or try to change the status of what is an Indian band, but it's trying to incorporate an Indian band, which is a body. But as we know from statutory interpretation of the term, it is in fact not a corporation. So you're not a full corporate entity, which would make you an artificial person in law, and you're not a natural person.

In order to make sure that the band as an entity was given rights under the Planning Act, we went through, I guess, the legal fiction of deeming you to be a person. So subsequently in the act when we say that "persons" can appeal a decision of an approval authority, therefore that means that a band, as an entity, has those rights. It was to give you appeal rights under the Planning Act. A person, in the Planning Act, is given different rights, ie rights of appeal, rights of referral and also the right to receive notice in certain circumstances, so again, this was a mechanism to allow the service of notice to be made and your representations to be heard as an entity.

Now, that is not to say that individual band members cannot exercise these rights on a personal basis, but it's the idea of dealing with the band as an entity, as a non-corporate and, I guess, non-natural person, to try and explain it in more simple terms.

That would also answer your last question. It is singular because we are in fact referring to one band and it does not affect the status of individual band members as natural persons who can exercise rights under the Planning Act. Do you have any questions arising from that?

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**Mr Peters:** Well, I guess one of the reasons this was

kind of a touchy situation was that prior to 1951, we weren't even recognized as persons, even individuals. You're well aware of that, I guess, at your station.

**Ms Perron:** Yes.

**Mr Peters:** So this here opens some old wounds. Prior to 1951, I don't know what we were. We weren't people, or persons. You know full well that no lawyer could defend us prior to 1951—

**Ms Perron:** I know.

**Mr Peters:** —and I thought that's what this was digging up again.

**Ms Perron:** Not at all.

**Mr Peters:** Well, it better not be.

**Ms Perron:** And it's not affecting the individual band members as natural persons. What it's trying to do is to make sure that if, as a band, you want to appeal a decision to the OMB, no one will come along and say, "A band is not a corporation and there is case law to that effect," or "A band is not a natural person, is not an individual." So that is making sure that you can have status and standing at the Ontario Municipal Board, for example, on appeals.

**Mr Peters:** The incorporation act says if we become incorporated, we then are no longer a person. That's what that means then?

**Ms Perron:** No. When you incorporate, you become an artificial person. So you can have an existence as an individual or as—

**Mr Peters:** That's what I mean. Your taxation exemption's out the window once you incorporate.

**Ms Perron:** I'm not familiar with those rules. There are different rules, I recognize, for natural persons and for corporate persons, and I do want to signal that there has been a response to the fact that we deemed a band to be a person and to give it status under the act, and the recommendation has been that we not only deem them to be a person but that we amend this to deem a band to be a public body. That is much more in keeping with the spirit of the Statement of Political Relationship.

So if you look at the definition of "public body" in the act, it refers to a municipality, local board, ministry, department, board or commission of any agency or government. So it's a higher status under the act, because there are greater rights given to public bodies and special rules made for public bodies that are not available to natural persons. The recommendation from policy is that this wording be changed to deem an Indian band to be a public body and that is done within the spirit of the SPR.

**Mr McNaughton:** How can the Ontario government claim that an Indian band will be a person when you just said that the intent of it was to make the collective able to be presented in front of the OMB? I need clarification on what you said.

**Ms Perron:** It's not trying to say you're something other than what you are. All it's trying to do is to give you a mechanism to make the recourses available under the Planning Act available to a band. It's a legal, I guess, mechanism for making sure that you're integrated into the Planning Act process as a band, because that's the

wording. The Planning Act was structured around determining the rights and obligations of persons and public bodies and—

**The Chair:** Can I suggest—I'm sorry.

**Ms Perron:** Yes.

**The Chair:** You will be able to have a copy of the Hansard as well for you to review again in the event there are other questions you might want to pursue or ask of this committee. So if you want, we will send you the Hansard of this and you can pursue it however you want in the next couple of days or weeks, as it relates to that question. You have a few other items, I think, you want to raise.

**Mr McNaughton:** I'd like to point out that from Six Nations' point of view of the Planning Act process, we do not agree that the intent should be to make us a person for the purposes of this act. What we would like to see in place of the interpretation is the requirement of the province of Ontario to notify, consult and negotiate with Six Nations, rather than having an interpretation clause or definition, whatever you want to call it, in this act that is vague and general.

First of all, there's no definition of an Indian band within the Planning Act or the amendment. There's an assumption made, but there's no definition. We feel that it would be best if that was not included, but instead replaced with a requirement of the province of Ontario to negotiate, consult and notify Six Nations where issues of planning are concerned.

If I can go on from there, perhaps number two will help—

**Mr Peters:** John, could I ask something?

The very definition of maybe not "Indian band" but "reserve" in the act says "land set aside for use and benefit of said Indian band where the title is vested in the crown." But if you turn to section 36, section 36 is only applicable to us, no one else, special reserve. It says, "where the land is set aside for use and benefit of said Indian band and the title is vested other than in the crown." That's us. We have the Haldimand deed; we have the Simcoe patent. That land, ose kowah, is ours. It's not crown land. It's not set aside. It's our land.

But it also says in these cases that it shall be viewed the same as other reserves in the act. So section 36 is only applicable to us. That's not crown land; it's our land. That's where this becomes much more serious than it would with other lands where a lot of them are held in common. Go ahead, John.

**Mr McNaughton:** Number two, we respect the ideals of the Planning Act amendments to allow the municipalities more autonomy in matters of planning. What we need from Ontario is assurance in legislation that municipalities must—not "may" but "must"—notify and consult with us, whether zoning amendments, development proposals or other things for areas where Six Nations may have an interest.

To do this, the municipality or developer would need to research the location to be rezoned and developed. Where Six Nations warrants, negotiations shall take place. They must negotiate and obtain Six Nations' approval.

With those comments, I ask my colleagues if they have any others.

**Mr Phil Monture:** Our position is basically nothing new. We've been practising this for a while where we have actually entered into agreements with municipalities, with authorities, with province of Ontario ministries; direct agreements with the Six Nations. As we alluded to before, things just haven't been happening well enough, to our standards.

I can leave with you copies of agreements which allow certain developments to occur under our rules and conditions. I'm sure Mr Eddy, being from the riding near the reserve and having done a great deal of consultation with us in adjourning municipalities, is aware of our relationship to work things out before we're forced to halt situations. We would like to work through all of these situations jointly with municipalities and whatever governments are out there.

They work, they are beneficial, not only to us but to all the residents adjoining any of these lands, these properties. Because we are approached daily to stop development on lands where our title remains, and basically it deals with unsettled land claims. Those claims are being filed and they're just not being settled through negotiations.

In the meantime, rather than freeze all developments within southern Ontario, we'd like to work hand in hand, but it's just not a consultation with us; it does require our stamp of approval. Until things change, I think it is a prerequisite that our consent be obtained, and I don't basically see where Six Nations can back off that position, because what we've been working at has been successful and they have turned into win-win situations.

With that, I can leave copies of agreements that we've entertained, to enlighten members of this board. It's workable. It's nothing to be afraid of. It's very workable. Those are my comments.

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**Mr McNaughton:** With respect, I'd like to thank you for your time and your request for an input.

**Mr Eddy:** Welcome to Six Nations of the Grand River. We're pleased to have you this afternoon to present your views.

In number one, it's another example of white man's legalese, that to facilitate a process the wording is used which you have picked up on and opposed. I can understand what you're saying, and I think what we need to do is look at that and eliminate it if you are content with the fact that any person can appeal a decision. I think that's the main thing. I hope we can look at that and see the possibility of some change, because I see that you disagree, and rightly so, that we are making a definition of something that there is no definition of. I get your point.

Number two, your suggestion there will facilitate development, there's no doubt about that. If you're in a discussion at the beginning of a planning application or a process, then it means you'll know all about it, have the information about it, and not need to come along later and suddenly stop perhaps some process.



I guess my question would be, and I'd ask the ministry to clear this up, in all cases, a municipality where they're subject to a planning process on land within a certain distance, I guess, of another municipality must automatically notify that other municipality. It's true we've been looking at this in another forum that perhaps you're not aware of and maybe you are, but what the Six Nations of the Grand River are requesting is that they be notified up front at the time with input, negotiation, whatever they term it, at the beginning rather than later.

Is there anything at the present time requiring a municipality to notify a neighbouring first nation?

**Ms Perron:** There isn't anything in the legislation at this time.

**Mr Eddy:** That's the point.

**Ms Perron:** But there are regulations, regulation-making powers, whereby we can require a municipality to notify any person or public body.

**Mr Eddy:** There are no regulations in effect now?

**Ms Perron:** Now there aren't any.

**Mr Eddy:** There would be with this act.

**Ms Perron:** Yes.

**Mr Eddy:** So when they are prepared, could we forward them to the representatives to consider and see if that meets their—I think that's where we're at.

**Ms Perron:** Yes, we can.

**Mr Eddy:** Thank you for coming. You make good points.

**Mr McLean:** I'd like to follow up on that question, because yesterday I asked the minister if we could have a copy of those regulations, and they don't seem to be forthcoming. Are we going to see a copy of those regulations before these hearings are over?

**Mr Hayes:** They're not all prepared, Mr McLean. I think you're aware of that. But they are being worked on right now, and we said when it came time to have the legislation that the regulations would be there.

**Mr McLean:** I was reviewing Hansard, and we asked in Hansard if we were going to have the regulations when these hearings took place. Now, that was back in June, and today you're telling me that the regulations are not in place. We asked for them three months ago, and you might as well be up front and tell us that we're not going to have them during these hearings. That would be my opinion.

**Interjection:** This is only September.

**Mr McLean:** Well, this is only September. That's right.

Anyhow, I'm pleased that you've come forward and expressed your views, and I will read Hansard with interest on some of the comments that were made with regard to the questions you asked. Thank you.

**Mr Drummond White (Durham Centre):** I don't want to participate in those—I am interested that you get your answers, that you are dealing on a government-to-government basis, that you have some very significant problems, as you mentioned, and they need to be clarified.

I want to thank you very much on behalf of the government for coming forth today, for bringing those questions, and I hope you will feel satisfied with the responses that the lawyer from the ministry has offered and will offer you. Thank you very much for coming.

**The Chair:** I should comment as the Chair just very briefly. Minister Wildman, or at least the government, has set up a round table, as you probably know, for many years now, with first nations' people to discuss and negotiate many, many things, including self-government. Obviously, those discussions are still ongoing. It hasn't been very easy at times on both sides. I would say, having been a member of the round table for at least one year, but self-government is part of those discussions. I know we've made progress but there's still a lot that needs to be done with those discussions between first peoples and our ministers who are negotiating all of these things. I just wanted to say that.

If there are no further questions, I want to—

**Mr Peters:** Just the one on self-government. We presented our paper in the House of Commons in I think 1983, 1984, on our version of self-government, which still stands today. Just the other night I was at a meeting and someone was asking, "Why don't we have some sort of paper or submission?" Ours is 10 years old, it's still up there and we haven't changed anything. That submission was all made in the House of Commons.

**The Chair:** I'm not sure what the federal government is doing with respect to this. I was only commenting on what the Ontario government is doing with respect to a number of issues, including the most important one for first nations, and that was self-government. Two separate processes are going on, obviously.

I thank you for coming today.

**Mr McNaughton:** One final comment I'd like to make is that what has to be understood is that the self-government process is another separate process as well; however, it is linked to the actions of the government of the day. The ministries must recognize that.

We have the Statement of Political Relationship that outlines what the government of Ontario understands collectively with those signing authorities there, and it's not being reflected within the rest of the ministries. There are a few glimmers of hope but it doesn't take an awful lot to look at those and see that there needs to be a lot more work done and it has to happen soon.

**The Chair:** Just another brief comment. It's not my job as the Chair to defend the government—

**Mr Jackson:** You're doing a great job.

**The Chair:** —in relation to this particular issue, but every ministry is fully aware of its responsibilities in terms of how it relates and connects to aboriginal people, first nations people, in relation to issues that they are discussing. But in terms of what you just said, we obviously have that on record as well and the ministry staff are here and the parliamentary assistant has heard it, this committee has heard it, and we will obviously take your information into account as we continue to reflect on this issue. Okay?

Mr Hayes wants to comment on a previous question.

**Mr Hayes:** In regard to the regulations, I can tell you right now that the staff is working very hard to get the regulations as soon as possible. One of the things that was made a point of prior to these hearings ever starting was that Indian bands would be notified and would have copies to make comments on, so that's one of the things that we're doing right now.

As far as the regulations, I could be corrected if I'm wrong, but I don't think there's been much legislation in the history of a province where you had the regulations ready at the same time as the legislation. But we are working very hard on it and we'll do it faster than any other previous government has ever thought of.

**The Chair:** Thank you, Mr Hayes. Thank you for coming and taking the time and bringing your brief to this committee.

**Mr McNaughton:** Thank you very much.

*Interjections.*

**The Chair:** Order, please. We're doing fine with the time. We're moving to the next delegation here.

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#### REGIONAL MUNICIPALITY OF HALDIMAND-NORFOLK

**The Chair:** We invite the regional municipality of Haldimand-Norfolk: Mr Keith Richardson; Mr Lee Kennaley, commissioner of planning and economic development; and Mr David Roe, manager of development and policy. We welcome you to this committee.

**Mr Keith Richardson:** Thank you very much, Mr Chairman and members of the committee. Our brief is relatively short, keeping mainly to one point that we know is very, very important to Haldimand-Norfolk and which we would like the committee very much to address. We're certainly prepared to respond to questions following on a more general nature if you wish to get into other issues.

The region's greatest concern with Bill 163 is the need for an amendment to provide for approval responsibility for local official plan amendments in Haldimand-Norfolk. This step will contribute in a major way to our streamlining efforts.

This municipality has been seeking delegation of district plan, or local official plan, approval responsibilities since the mid-1980s. We currently have subdivision approval authority. Most recently, the region's streamlining committee reiterated the need for this key step to improve the planning process in this area. Ministry of Municipal Affairs staff have indicated that Haldimand-Norfolk is a priority area for such delegation.

There is currently provision in the Regional Municipalities Act to establish our district plans as local official plans. It is our intention to work with the Ministry of Municipal Affairs to carry this out in the immediate future by the simplest means available. Simultaneous delegation from the province will afford the region a direct means to ensure regional plan implementation.

Our district plans are currently, in effect, local official plans. In practice we operate a two-tier planning system in Haldimand-Norfolk. All three levels—local, region and province—continue to deal with district plan amendments

which are in many cases of local significance only and, I might add, cause a lot of concern to people because the issues are basically so small.

The areas appropriately hold public meetings on local planning matters. Often an official plan amendment application is accompanied by a zoning application, which must be dealt with in tandem at the local level. The region must also hold a formal public meeting because the responsibility for adoption of the district plan amendments rests with regional council. There is, furthermore, no provision for delegation to staff of non-contentious district plan amendments under the current system.

The process is subject to justifiable criticism of having too many steps and does not promote a positive public view of government. It is therefore most urgent that Bill 163 be amended to streamline the planning process in Haldimand-Norfolk region by making provision for delegation upon the establishment of the district plans as local official plans or upon delegation of the responsibility to adopt district plan amendments by the region to the areas.

We note that the regions of Peel and York are to be given local plan approval authority contingent upon establishment of an official plan. Haldimand-Norfolk region has had an official plan adopted since 1978. The plan was reviewed in 1985 and the most recent review is nearing completion, with the involvement of a number of provincial ministries.

There is an opportunity to further the intent of the Sewell commission recommendations regarding the province's role in the planning process through a simple amendment to section 10 of Bill 163. The regional municipality of Haldimand-Norfolk should be added to the list of regions with authority to approval local official plans. As noted, this responsibility would come into effect in the immediate future upon establishment of the district plans as local official plans.

The province's role in the planning process should focus on policy rather than application processing. There is much to be gained by streamlining the process in Haldimand-Norfolk and no loss, since other mechanisms exist to address provincial policy, including the regional official plan. Much time could be lost if Bill 163 does not address our concern regarding our official plan delegation.

A copy of the resolution of regional council regarding Bill 163 and the related report are appended to this brief.

I have with me our planning commissioner, Mr Kennaley, and Dave Roe from planning staff, who are certainly prepared to answer more technical questions than I as a politician. But we'll attempt to field any questions that you might have.

**Mr McLean:** Do you think that all counties or regions should have an official plan, that in this Bill 163 there should be some direction that says they should have an official plan within five years? There's nothing in here that says that now. I'm asking for your input.

**Mr Richardson:** Our municipality has had one since four years after the time we were incorporated as a region. It's not up to me to tell those municipalities



whether they should or shouldn't have plans. The planning commissioner might look at it a little differently. I'll let him respond.

**Mr Lee Kennaley:** I think it's important that there be upper-tier plans in all areas of the province, personally.

**Mr McLean:** I guess the question really was, do you think it should be within the act, that they should be directed that they shall all have official plans on the minister's desk within five years?

**Mr Kennaley:** I think I'd be going too far as a planning professional to suggest to the province the time lines in some areas, because it may well be quite difficult for some of those counties to do official plans. But I think in the long run it's really important to have upper-tier planning documents province-wide. I can't really comment on the time lines.

**Mr McLean:** Okay. Can you comment with regard to the agricultural policy with regard to severances? I'm not sure whether you're aware of the policy statements that the ministry has put out or not, but do you have a severance policy in your county, and what is it?

**Mr Kennaley:** You want me to respond?

**Mr Richardson:** Yes, I think you should respond. It's not a simple document.

**Mr Kennaley:** Yes. We have basically in our regional plan a policy that provides for one severance per viable farm holding. Our plan has been recently reviewed. Regional council has suggested that this policy remain essentially intact.

**Mr McLean:** I see the policy here says one lot per farm operation for a full-time farmer of retirement age. You don't have the retirement age or anything in there, just one per farm, retirement lots.

The aggregate part of the bill, are you aware of it in 163? Have you any comments with regard to the feasibility of an aggregate developer wanting to locate within your region?

**Mr Kennaley:** We basically in our region have had very little difficulty with aggregate issues. Our plan protects the significant areas of aggregate resources. It has not become a very major, major public issue in Haldimand-Norfolk. The provision of licences and the establishment of pits and quarries is not a major issue for us.

**Mr McLean:** Minor variances: This direction is that it's not going to go to the OMB; they will be done locally. Do you have a plan in place to deal with that?

**Mr Kennaley:** We're quite happy with that provision. They're such localized matters that I think it's not a good use of the process to bring minor variances to the municipal board. Administratively, we would be quite prepared to respond to that change.

**Mr McLean:** The 30-day provision within the bill: Some say that it should be 90 days, that 30 days is maybe too short. Would you have an opinion on that?

**Mr Kennaley:** We agree with that completely. The turnaround times to committee and council really require us to do 60 days in our region. The other thing we pointed out on that score is that it really doesn't give

enough time to bring in the alternative dispute mechanisms, so we would prefer at least 60 days in our region.

**Mr McLean:** The other question I have is with regard to wetlands. Being that your plan is now ready and wanting the approval of the minister, do you have a policy in that plan with regard to wetlands?

**Mr Kennaley:** Our existing official plan, adopted in 1978 and reviewed in 1985, deals with environmental issues, but we have recently reviewed our plan. The new plan which will be coming before the minister will deal with wetlands in accordance with the wetlands policy statement, we anticipate.

**Mr McLean:** What policies do you have in your plan with regard to disposal of waste?

1510

**Mr Kennaley:** The regional corporation is responsible for waste disposal in Haldimand-Norfolk and there's provision for studies and notification of neighbours to waste disposal sites. The region has a solid waste master plan which we've been working on for some years and that's reflected very generally in the most current documents.

**Mr McLean:** Back to my first question: You have a two-tier system. There are a lot of municipalities that don't have an official plan and there are some counties that don't. The municipalities locally that have them and the county has one—the county takes precedence over the local one. Wouldn't it be appropriate that the upper tier be the one that would do the official plan and then would it be necessary to have to do an official plan locally? What's your opinion on that? Would they have to do it, or should they do it?

**Mr Kennaley:** I believe they very much should do detailed local official plans that deal with the local planning issues and the detailed pattern of land use. Those issues are not appropriate to the regional plan at all, those neighbourhood-type secondary issues, and we encourage, and we are encouraging our local municipalities in Haldimand-Norfolk, to be partners in the planning process. They always have been and legally we want to, in the very near future, have those district plans—which they prepared, by the way—established legally as local official plans, in accordance with the regional plan.

No, I don't believe a one-tier planning document, particularly in Haldimand-Norfolk's case—our region is about 75 miles long—is suitable, particularly for us.

**Mr McLean:** When do you think you are going to get your approval?

**Mr Kennaley:** We've had an official plan since 1978.

**Mr McLean:** I know, but from the minister for your designation as approval authority in respect—

**Mr Kennaley:** Oh, as an approval authority? We hope that will come by a very simple change to section 10 of this bill. Just add Haldimand-Norfolk as an approval authority, it's simple. We established the district plans as local official plans and we have done something in Haldimand-Norfolk which will be an immense benefit for streamlining of the planning process.

**Mr McLean:** Thank you for appearing today.

**Ms Harrington:** You've brought forward one specific concern which I will ask the ministry or the parliamentary assistant to address, but before I turn it over to them I wanted to get your reaction to some other parts of the bill. You did mention streamlining, the cutting of the red tape. Will this initiative be helpful for you as a regional body?

**Mr Kennaley:** The bill as a whole?

**Ms Harrington:** The idea of trying to streamline it and cut the red tape in the development process.

**Mr Kennaley:** Oh, absolutely. The delegation would save several months from our official plan amendment process. Many of these amendments that we're dealing with—for instance, we had an amendment in Port Dover for a resident who wished to have some landscape sales in their rear yard. It was a local neighbourhood issue, not even a regional issue. That matter had to come before the local committee in council, the regional committee in council, then on to the province with a wait of a few months, because there are a great many things to deal with at the provincial level. But that simple, official plan amendment under a revised system could have been dealt with by the local municipality and, given no objections to it, simply approved at the staff level with regional council delegation of the approval authority to staff for non-contentious local official plans. Something that might take 12 months or more could be dealt with in two months and it should be dealt with in two months. The residents of Haldimand-Norfolk can see quite clearly that our processes in many cases are too lengthy.

**Ms Harrington:** So they have no problem with that part of the bill.

Another initiative of the bill is to, I believe, make stronger and clearer the province's policy statements, for instance, with regard to wetlands and with regard to agricultural land. Do you think this will impact on your region in a positive way? Is it going to improve your ability to protect your natural resources?

**Mr Kennaley:** Yes. I don't think anyone in Haldimand-Norfolk believes that we should not be protecting our remaining wetlands. We are very concerned about the accuracy of the wetland mapping and we're contacting the Ministry of Natural Resources. Regional council is indicating to the Ministry of Natural Resources that while to date our new plan is reflecting the provincial policy on wetlands, we want a review of the wetland mapping and designations in Haldimand-Norfolk.

**Ms Harrington:** I'd like to ask the parliamentary assistant to comment on your request.

**Mr Hayes:** I understand that you just released your report—what is it?—your regional study or regional review yesterday. I can't really make any comment on this because you have the letter here to the minister and I'm sure the minister will deal with that as soon as he's able to do so. I cannot make a comment one way or the other on which way it may go.

**Mr Wiseman:** I'm interested in your official plan a little bit. How many acres of land have you added to your urban envelopes in your official plan? How many addi-

tional acres are you requesting for industrial, residential and commercial?

**Mr David Roe:** Our original official plan is a policy plan and does not specifically designate urban boundaries. What I might say though, in the last few years we've had virtually no expansion of our urban boundaries.

**Mr Kennaley:** Could I add something to that too? Haldimand-Norfolk, in its original plan, had anticipated quite substantial growth, so that our regional plan and district plan designations are quite ample for the growth that we're experiencing now. Through the current regional plan review and then the subsequent district plan review, we're not likely to need to designate additional lands because we've got quite ample designated.

**Mr Wiseman:** So there are already lands that have been designated for industrial, commercial and residential.

**Mr Kennaley:** Yes.

**Mr Wiseman:** You see, I have a problem with this part of the bill, to be quite frank. I have a great deal of difficulty with the 30-year allocation of land, both in the Ministry of Housing and in this bill. I think what happens is that it implies development rights for developers.

**The Chair:** Could you raise your volume a bit, Mr Wiseman? It's very hard. I can't hear you very well.

**Mr Wiseman:** My own volume. I've never been told that you couldn't hear me.

**Interjection:** First time.

**Mr Wiseman:** There's always a first for everything. I guess I have a little bit of a problem with that, because it implies development rights which, maybe as we learn to understand more about ecosystems, planning and sustainability, may not make sense in the future. So I have difficulty with rolling in a great number of acres into official plans, because then they imply development rights. If you come along in the future and you want to take away those development rights because they don't make any sense to what planners and what councillors and what residents in the future would deem as appropriate—I just want you to maybe comment on that. Do you find that is a problem?

**Mr Kennaley:** I understand what you're saying. I guess if the environmental concerns are taken into account when those lands are designated, that's something that has to be done at that point in time. Part of the reason we have to plan on a longer-term basis is that municipalities have to make financial commitments for infrastructure on a longer-term basis. While it's very difficult to plan 20 or 30 years ahead, we simply have to because of the fact that decisions made today financially with regard to infrastructure are on that kind of time line. Otherwise, the municipality couldn't provide for growth.

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**Mr Wiseman:** Last question: How many official plan amendments have you asked for in Haldimand-Norfolk? How frequently do you ask for an official plan amendment and how much have you deviated from your original official plan of 1978?

**Mr Kennaley:** We have what, about 12 or 13?

**Interjection:** Twelve or 13—



**Mr Kennaley:** Yes, over 13 years to the regional plan. The district plans are amended more frequently because of the fact that they're dealing with a pattern of land use issues: if somebody wants to put a neighbourhood store in or that sort of thing and it wasn't contemplated in the original plan. We get about 10 official plan amendment applications a year to the district plans.

**Mr Wiseman:** And these plans, do they all come forward?

**Mr Kennaley:** No, some of them go forward and some of them don't. It very much depends on the application of provincial policy and what the regional plan says about the issue. So there's a mixture—

**Mr Roe:** The bulk of them would be estate-lot proposals which have conflicts with provincial policy, and in those cases they are not approved.

**Mr Eddy:** I appreciate the views of the delegation and although it's interesting to have their views on matters in the Planning Act, I think we really need to zero in on their request. I would like to compliment the region because the efforts in Haldimand-Norfolk are to protect, as I can see, the downtowns of the various urban centres throughout the Haldimand section at least, that I know about, of Haldimand-Norfolk. I appreciate that effort, but I have to speak to this issue in the first paragraph, the request. Here we have a regional municipality that saw their responsibility, proceeded with it an official plan, and have the request for delegation and nothing happens.

The government is prepared to give delegation to Peel and York and worry about them. They did not accept the responsibility. I don't know when they started on their regional official plans, but they've just started. I don't know and I want an answer why Haldimand-Norfolk is being treated this way, because it's not proper. They have done their duty, they're being delayed, we have all these reviews of Haldimand-Norfolk and one of the reasons there's a problem and the citizens are upset is simply because planning takes too damn long.

I guess all governments are to blame in the eyes of the region and the citizens because of the length of time. I don't understand it, I don't know why we're not facing up to it now. But I'll tell you now, if the province would get off its ass and face this problem, then they'd have time to deal with some of the other items they should have been dealing with and, in my opinion—and it's a charge—deliberately delayed official plans in many other municipalities of this province that could have been processed while they're dealing with these problems in Haldimand-Norfolk, which the regional council is willing to deal with, and has requested to have the opportunity to deal with—that other upper tiers have been given the responsibility. I don't understand it and I want to know.

The parliamentary assistant, as I understood, is saying he can't comment on it because of the review.

**Interjection:** Why?

**Mr Eddy:** They have an official plan, they have a planning department, the official plan is approved, let's get on with it. It shouldn't have to be in here but I want it included. Can it be? Will it be?

**Mr Hayes:** I don't think I have to bang the table and I don't think I have to really apologize, because—

**Mr Eddy:** No, you don't.

**Mr Hayes:** —if you want to get into your funny little politics you go ahead, but—the government's been dragging its butt for many years—

**Mr Eddy:** It's not funny little politics. I live it. I live with the problems in the region and I didn't know this was a big problem and I don't understand it. It's a problem of not understanding. It's not you I'm criticizing, I'm just criticizing everybody in the ministry who hasn't faced—

**The Chair:** He's about to give a response.

**Mr Eddy:** Yes, thank you.

**Mr Hayes:** I think that's really the reason why we are doing what we're doing, reforming the planning process in this province—

**Mr Eddy:** With some municipalities.

**Mr Hayes:** I did bear with you, Mr Eddy, if you'd just listen to me for a change. That's why we're doing this, and that's why we're doing the consultations across this province. But in regard to your request, I think what has to be done definitely—this committee can deal with that request. It was a different circumstance up until now because we were dealing with, I believe, the two tier, and now we're dealing with the one, the upper tier. Am I correct on that?

**Mr Kennaley:** No. It's the other way around.

**Mr Hayes:** But this is something this committee can deal with and this committee can make recommendations, okay? Thank you.

**The Chair:** We appreciate the contribution you made today with your presentation. Thank you very much.

PRESERVE ESTABLISHED  
NEIGHBOURHOODS SOCIETY

**Ms Olga Pawluk:** Thank you for the opportunity to address you on Bill 163. My name is Olga Pawluk. I reside at 10½ Kernahan Street, St Catharines, Ontario. I'm founder and past president of PENS, Preserve Established Neighbourhoods Society.

This group was founded because it had become apparent to a number of our members that the processes, procedures and language of various levels of government were thoroughly baffling and befuddling to the average citizen. This of course included many of our own members. Our mandate is to research these various processes, procedures and terminologies and attempt to present this information in a clearer format to the average citizen to assist them in comprehending and dealing with the systems and language used by those within the systems.

Time and time again, the average home owner is faced with decisions made on their behalf by either elected officials or appointed quasi-officials that directly affect our homes. The biggest investment most of us make is in our home. This is done after a lengthy search for the right neighbourhood and the right home. The decision to invest in that particular home is based on the conditions at that particular point in time. There are no special clauses in the buying agreement that notify the buyer that

the now circumstances will stay as is; nor are there any clauses that caution you that these circumstances may well change in the future based on someone else's decision on your behalf. These decisions are made with the blessing of various levels of governments—provincial, regional and municipal—all funded by the very same home owners via their various tax dollars.

Despite all the careful research and finally finding the ideal established neighbourhood or subdivision and the home within it, far too many of us are faced with, or have already suffered through, the prospect of having our block redeveloped. The first time around, the subdivision was subject to all the rules of the various levels of governments. Some years later we are faced with the unwanted redevelopment of our area by these same levels of government without our buying into the revised rules.

With the present focus on increasing density to the maximum throughout many cities, a great many of us have become unwilling, and without recourse, participants in major redevelopment in our neighbourhoods.

Consider the example whereby a 25-unit apartment building is introduced into a normal city block. It has the impact of doubling the number of homes in that block, calling each apartment a home. You might want to refer to it as a superimposed subdivision. In the past subdivisions were referred to as bedroom communities. Now we can refer to them as bunk-bedroom communities.

The Geneva South Home Owners Association had concerns recently about just such a possibility. As preparation for the hearing at the region, the Ministry of Municipal Affairs booklet, a citizen's guide, number 5 in the series entitled Land Severance, was obtained from the regional land division committee office—these neat little books.

Going through this book very carefully, a number of areas were highlighted. The things in this booklet that are highlighted didn't exactly happen as we had expected. The booklet's intent may have been to give guidance to the average citizen and all it did was create confusion. Area home owners were astounded to learn how very little assistance was available to them.

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For example, the announcement of an application for pending changes could be avoided altogether. We were, however, informed that two fluorescent orange signs, unreadable from the road and missed by many, were the regional government's way of informing bordering and area property owners. This sign has smaller lettering on it and if you travel on a very busy street you don't have a hope in hell of being able to read what it is. It could be "for sale," it could be "apartment for rent," it could be almost anything. The type of sign that I think would be more suitable and probably fairer to the average citizen trying to watch the road they're driving on and watching a little bit along, the signs would be something like a real estate sign. I draw to your attention that I doubt anyone here has ever driven past one of those signs and not noticed who the real estate company was, who the agent was, what the telephone number was to call. Now, for an average citizen to be driving by, surely to God, they could be privy to just a little bit of extra lettering in that

sense. It could be titled, for example, with the region, severance and the date, and let it go at that.

Quoting the regional Niagara land division committee secretary-treasurer, "Although provincial legislation requires neither a public hearing to be held, nor any notice of the consent application to be given to nearby property owners, it is the committee's policy to do both"; in other words, a sign that you can miss. In this particular example, there should have been still a third sign, which wasn't put up at all. The assumption then is that this or any land severance and amassing of a large parcel of land without any declared plans could be approved without any participation of any kind by the neighbouring property owners, and this at the direction of the provincial. Isn't this appalling?

I quote further from the same letter, "The provincial policy the committee referred to is an Ontario government policy statement entitled Land-Use Planning for Housing which was approved by the Lieutenant Governor in Council on July 13, 1989." So much for open communication and citizen involvement.

A letter of protest about this process was directed to MPPs Jim Bradley and Christel Haack. The regional Niagara land division committee responded. Copies of both letters are attached for your information.

At the same hearing, a multitude of concerns were raised by concerned neighbouring property owners and dismissed as details for municipal officials to attend to. That flies in the face of what it says in this little booklet, "If a proposed severance comes to your attention and you have a serious concern about its effects on you or your property, you should contact the approval authority." The book says one thing, the people at the region say something else and the average citizen concerned about their own home seems to slip right through the cracks between these two systems. The caution that the Ontario Municipal Board frowned upon frivolous appeals left the implied message that our many concerns would not be deemed serious enough. Fair and open consideration for the average citizen?

No matter the amount of reading I do, everything seems slanted towards a speedy approval for developers and to save them money. While there is the occasional mention of citizen group participation, there is no clearly defined acknowledgement in writing of the impact on those whose lives are directly affected, nor is there a clearly defined procedure that allows the individual citizen to be introduced into the process from the outset. Asking questions results in having someone on some committee inform you that there is no need to participate in the decision that affects the major purchase of your life, your home. Even worse, this is condoned by a provincial law. As one of a very large group of taxpaying citizens called property owners, I cannot protest strongly enough that this is an injustice to us all.

You're preparing a law that focuses on some future group of people at the expense of the existing people. We protest that you have found our lives to be so easily dispensable. The average home owner is trapped in red tape and is not furnished with adequate guidance and information on how to protect against the loss of their



way of life and, in far too many instances, the loss of their property value. How can the property owner recover from this loss? Is there something in the process that gives the property owner a speedy rebate for the loss of their property value? With this loss in property value, does it then follow that one can pay less property taxes? Perhaps the developer who caused the loss in the property value and quality of life can dip into the moneys he's saved by the speedy new process to compensate those whose lives he chose to impact.

Most of us can fully comprehend the reasons for increasing density. What we cannot comprehend is the great degree of intensification, nor can we comprehend how we are not afforded the opportunity to participate fully in the process from the outset. There should be no consideration of applications to amass lands and sever property without full disclosure of the plans by the applicant. The regional government, by granting these applications without any plans, sets the redevelopment of a neighbourhood in motion. Plans must be divulged from the outset. No plans, no hearings.

Multiple meetings, many scheduled during the day when most property owners are at work, do nothing to facilitate the open government we keep hearing about. Meetings must be scheduled for the best time for all citizens. There must be representation from both levels of local government, regional and municipal, at these meetings.

How many members of this committee have been faced with the redevelopment of their neighbourhood? How many of you have welcomed a big apartment house in your backyard or side yard, or perhaps a giant house spliced on to the property by your bungalow?

How many of you believe that the average citizen is unable to think clearly enough to be able to make their own decision about the direction of their life? How many of you have invited the average citizen to test-market the Guidance for the Average Citizen booklets before making them available to the general public?

How many of you give serious thought to the constantly changing terminology you toss out to the average citizen without any concern that these terms add further confusion to present planning procedures? Have you considered a glossary of terms to clarify your jargon to the average citizen? For example, has "neighbourhood" now become "infrastructure"?

Are all committee members home or property owners, or are some of the committee members who live in apartment buildings deciding on how a home owner will react?

You're about to embark on a new procedure that affects the properties and neighbourhoods of areas previously developed. Excluding these property owners from this process is unacceptable. Property owners must participate in decisions affecting their quality of life and properties. Don't force the average citizen to accept your decisions.

Please recognize the average citizen. Allow them to fully participate in decisions that affect their lives and their neighbourhoods. We as citizens must have some

control over our lives. Don't sacrifice the requirements of the many for the few.

In summary, allow me to share something that I find very interesting: The Canadian Bill of Rights, in part 1(a), refers to the "right of the individual to life, liberty, security of person and enjoyment of property and the right not to be deprived thereof except by due process of law." Thank you.

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**Ms Haeck:** Olga, nice to see you. I know that in your role as chair of PENS—your group actually has undertaken to develop a glossary that would aid citizens in their efforts to deal with developments in their area.

**Ms Pawluk:** The glossary is part of a resource kit that we've developed. We find that too many times all of us in our workplace develop jargon; you short-form an awful lot of things. It may be unintentional, but you do. After a while, you lose sight of the fact that people who are not within that circle find it a foreign language. We've worked towards redefining "bafflegab," as some people call it—others are offended by it—into some language that is simple. There are not any exotic words or new words introduced. Keeping it simple is really a thing that the average citizen needs. They need some consistency in this instead of a new word every other year or whatever about the same topic confusing people.

**Ms Haeck:** Your group was very much involved in something that did affect my home, but not directly: the redevelopment of Welland Avenue. In that process, I know that your group definitely made sure that a lot of people were aware of that road expansion.

Your comments relate to what I know is part of the bill, and that relates to notice provisions, not just the time but actually who is affected by a notice and really what should be part of that notice. My question really pertains to what you would like to see happen if in fact, as in your case, you've got an impending apartment complex. What kind of notice would you like to see the neighbours receive? How far should that notice actually be directed?

**Ms Pawluk:** I didn't want to talk about a specific piece of property, because I didn't think it was the plan here, but in this instance it was an L-shaped piece of property. We had two signs side by side on one street and a third sign not shown on the other portion of the L, on another street, at all. People who lived right next door in that same area hadn't spotted those signs because they're similar, as I say, to these "Apartment for rent," "Car for sale," "Tomatoes in the backyard," any of these things. If it's a busy street, you tend to avoid driving that street, so that something that's going on in your backyard is not necessarily something you know about. You will take a circuitous route to get home to avoid getting trapped in the traffic, and yet you need to take the traffic route home to know what might be going on in your backyard.

There should be some mechanism that would allow a small item in the paper.

**Ms Haeck:** How about a letter or something?

**Ms Pawluk:** A letter. The municipality gets a hold of people in the area; the region does not do this. One of the things that I personally find the most offensive of all is

that in this particular hearing at the region, when I flashed this book it offended a number of the people who were at this hearing. They didn't like having the words quoted, yet I picked up this damn book right from their land division office.

If the book is guiding you and the committee is following some of this and if we get into an area where it becomes very, very tight and someone finally gives you a, "That's the way it is, because the province said so," what do you mean, "The province said so"? What did they say? Give me a piece of paper that shows me literally, that says that you don't have to show me or you don't have to tell me.

I think an ordinary person should be entitled to that. This is playing with the major investment in their lives. I think people want to participate in that. They don't want someone to come along and say, "There, there, dear, I'll think for you." If I think clearly enough to buy the house, I should be able to think clearly enough to know what I want to go on around it.

**Mr Wiseman:** You asked this question: How many of you welcome a big apartment house in your backyard or side yard? Before I even took possession of my house, the developer was asking for an official plan amendment to the area behind me so that they could put up a 42-foot medical building in an area that was zoned public use.

How easy should it be for developers to get official plan amendments? How deeply entrenched do you think the official plans and what they are indicating in terms of low, medium and high density and residential, commercial, industrial properties, how firmly entrenched should those be in official plans so that people can have the knowledge that when they do their homework, they do their research, what they're being promised is what they're going to get?

**Ms Pawluk:** I think it should be spelled out. For example, if you're saying low density—and I'll throw this out as an example—it's one storey. If it's medium density or as you go up, there has to be some measurable device. As we talk about density, some bigger properties that people live in are hard to take care of. There's an awful lot of work involved and everyone in this day and age is not interested in that amount of work. If there's to be development in an area, if it's in line with the type of neighbourhood that it is, if the highest building is two storeys high, then the apartment building should not go higher than that. We should not have to get into game playing that I've seen where occasionally someone says, "You know that building, that's higher than the three storeys it was supposed to be," and someone says, "That's okay; we'll fix that." What they do is they'll pile up a little bit more earth along the side and they'll say, "We'll just take the measure from here up to the roof."

*Interjection.*

**Ms Pawluk:** This is exactly what torments the average citizen. I'm sorry; this is done. You pick up a paper and you read it. There has to be something to stop the game playing and allow people to enjoy their homes based on what they've found and bought and invested in, instead of looking over your shoulder one day and saying, "My God, how the hell did they ever do that to

me?" I certainly am not the only person who thinks this.

**Mr Wiseman:** I'm sitting here because you're not the only person.

**Ms Pawluk:** I pointedly asked the question because when you come in and you look at a lot of names, instantly these things go through your mind, "I wonder how many of these guys live in an apartment house and they could care less about the roof of that guy down there." You think it; you can't help but think it. I'm sorry.

Another thing is where you talk about, "Well, the apartment will only be so high." But then they have all of the extra gables and the fancy chimneys and everything else and now, all of a sudden, the thing again has grown a storey and a half with all of the exotica. It has to be from ground to the very top of all the paraphernalia, that is the measure, from top to bottom, no piling up of earth along the side.

**Mr Curling:** Thank you, Ms Pawluk. You say it as you see it and it's true. I want to thank you for your presentation. At times, as you say, sometimes I agree with the description of what we see problems to be but we don't really agree with the prescriptions of what the government sometimes bring about. You talk about density too and game playing. Intensification is another game playing too. You have bought land or your home with a certain kind of neighbourhood and then, all of a sudden, there is this surge of intensification without any consultation on the impact on the community.

I put a question to you then and to help my colleagues in the committee here: Should the government halt this intensification approach, while telling us to believe that it wants a reformation of the Planning Act and in the meantime going ahead with intensification? The fact is that sometimes people feel that's had a great impact on them and they almost sometimes seem to be circumventing the plan.

**Ms Pawluk:** I understand that we have to have a certain amount of intensification. I think the argument with most people is the degree of it, and the degree of it stretches to such a point that it impacts highly on the surrounding homes. If you hold everything up, then you'll have everyone crying the blues of: "Oh my God, now the developers have got to go into idle mode. Isn't this sad? Isn't she awful? Oh boy, this is bad stuff." On the other hand, if you have a situation that says, if we have moderate intensification in a neighbourhood, where you do add some homes that are similar to the homes that are there, and if you add an apartment house—it doesn't have to stretch to the absolute max—then it's not destroyed the fibre of the neighbourhood. It's added some living space in the area but it's not done it at the expense of the other people around there.

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How you can legislate that without almost specifically saying you can't come within so many feet of a home or you can't have a driveway right at somebody's house side—I'm really not entirely sure how you could get by that. But I think there has to be some more specific language, because as long as it's general, then it can be



interpreted in all kinds of ways and it always seems to be at the disadvantage of the home owner. I think people want to feel that they're into a fair game. You know, there's a possibility here I might win something. A lot of times people go into these things and come out feeling that they've been had.

**Mr Curling:** I understand, and as I said too, the description is that there are homes needed for people to live in out there. In the meantime, if we change it too dramatically, in too dramatic a form, what we find is that whatever the official plan or whatever the density had called for, whether we build a high-rise in order to get the density or whether we pack the basement without any fuller consultation, my feeling then—and I'm going back to the reformation of the Planning Act—is that what they want to do with consultation is that while this is going on, we're also talking about reforming the Planning Act.

I am saying to you, you think that a better cooperative approach is to maybe put a halt on all of this and make sure that we have the Planning Act in place. In the meantime, right now there's a great abundance, regardless of what one is saying, of accommodation out there and the game that we all play is to talk about affordable accommodation. But there's enough accommodation there, and I'm just wondering what strategy you would suggest to the committee.

**Ms Pawluk:** Given his example and the fact that there is housing available, then if there's not too lengthy a delay I think there should be a pause to take a deep breath and take another long, hard look. Again, you can't just say intensification. You have to say intensification at the expense of what? You're not into a greenfield area and you can't take the example of putting this humongous building beside these little homes. There has to be a levelling factor that allows some intensification, in some areas less, in other areas perhaps more, but a pause is not a bad idea.

**Mr Jackson:** Thank you, Ms Pawluk, for your presentation. I find myself agreeing with your presentation. Your last comment resonates well with me with respect to the Canadian Bill of Rights, but it was deleted from our charter, as you are painfully aware—private property rights in this country. I think it strikes at the heart of what your concerns are, because you don't have that right where you can run to the Supreme Court to prevent even a provincial government from substantively changing what you rightly admit is the largest investment you'll ever make in your lifetime.

My question is around the issues of what is deemed by the province to be of provincial interest. We're seeing some very strange variations on this. I know in the previous government the Liberals were selling off some of our best real estate holdings in Metropolitan Toronto and they were increasing the intensification to pump up the price so that they could make more money for taxpayers, but it was changing the intensification.

More recently, we've seen overrides being implemented by the province because of moving a mental health facility out of an institution and moving it right into a stable neighbourhood, which has really got the community in an uproar because it doesn't have the

services in place, but the current government defends it.

So intensification has maybe been one issue. People tend to look at these questions of provincial interest as environmental issues only, but they also can be in this other area of affecting property values and so on.

Do you or does your group have any comment about the range of issues and the power that the province would have in identifying virtually anything it wishes under a provincial interest and then imposing that on neighbourhoods even for political reasons, as is the case with the mental health facility in Toronto?

**Mr Grandmaitre:** May I thank the guest speaker?

**Mr Jackson:** Mr Chairman, I was very careful not to identify Mr Grandmaitre as the minister responsible, nor Mr Curling as the Housing minister. I was very careful not to identify that.

**Ms Pawluk:** I'll try to give a careful answer. I think even in the example that I've talked about you have instances where you cannot even see a report, where someone has gone into the area and when this is discussed you do not see a report, where someone has come by and said, "Yes, I've gone to look at Mr Grandmaitre's neighbourhood and I think that will be going in the middle of his block and it will affect so many homes and it will affect what looks to be an awful lot of young children running around."

As these policies evolve, as you open the doors, you open the door to someone flipping out the word that the province said, "We can do it." They don't tell you exactly what the province said they could do, and maybe they're only interpreting it in their way, but there's that excuse. But introducing things like this, there has to be something to force a recognition of the people surrounding that property and the impact on their lives.

Perhaps there has to be an extra sheet of paper, but the extra sheet of paper has to say that I've talked to Mr Jackson, Mr McLean, Mr Grandmaitre, Mr Curling, all of whom surround this property, and I have duly noted the impact that I am going to have on their lives. That's missing and that's sad, because you're dismissing the average citizen: "Hey, I've got this neat law. What the hell, I can do anything I want," and that's sad. I mean, we all pay taxes and we all elect you and we all hope that you will do things on our behalf, but at times the system looks like you're not doing it for us. Thank you.

**The Chair:** Thank you for taking the time and presenting this brief to this committee. We appreciate it.

NIAGARA RATEPAYERS FOR  
A HEALTHY ENVIRONMENT

**Mr Jim Perry:** Good afternoon. My name is Jim Perry. I'm here this afternoon representing a local environmental group, Niagara Ratepayers for a Healthy Environment. We have about 500 members. We all live in close proximity to the Mountain Road dump in Niagara Falls. We represent about 80% of the households within two kilometres of that dump site.

Reading through your literature, which was a task, I believe your basic premise that the commission has found is that the current system is backlogged, it's full of needless disputes and it didn't adequately protect the

environment. I'm here today to give you our experience and it's quite the opposite.

While we had to wait 10 months for a hearing date, all our members felt it was well worth it. Our dispute was far from needless. The hearing process, frankly, protected our environment and the health and safety of our families far better than the local agencies were prepared to, and it's all the result of a joint hearing.

In a nutshell, our story is simply this. Our group opposed and appealed the nine-year expansion of the city dump in Niagara Falls, which already had tentative approval from both the Ministry of Environment and the Niagara Escarpment Commission. Because the area in question impacted both of those pieces of legislation, the hearing was a joint hearing.

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In retrospect, did we win? Probably not. In the good Canadian tradition, it was a compromise. The city was asking for nine years; it got five. However, there's a much tougher set of regulations that dump must now operate under, and while it's tougher than what I think was proposed by some parties, it was not as tough as we were hoping.

Based on that experience, we would like to make five points to the commission this afternoon. These are elements we think you should consider in your proposed legislation. They're based on the experience that we had with this group opposing the Mountain Road landfill site.

They are simply this:

The first one is intervenor funding. That's one area we'd like to talk about. The second is the necessity of a Ministry of Environment review. The third is, in our opinion, the weakness of policy statements. The fourth is the mandated openness that city councils are requested to have versus the perception of corruption. The fifth one has to do with the motivation or unwillingness of local agencies to mediate and negotiate with third parties.

First off, a real cornerstone, as far as our group is concerned, is that the intervenor funding must be left intact as it currently is. The promise of intervenor funding up front is absolutely essential. The applicant wants the rezoning or whatever and in our opinion the applicant must pay. Our particular little battle cost close to \$150,000. It is well beyond the means of a neighbourhood group to raise that kind of funding. It's our firm belief that concerned, informed citizens are valid stakeholders in this exercise. We require funding to remain proactive.

The second cornerstone is that the environment must be protected by an MOE review process. This is especially relevant for municipally sponsored projects. We really can't expect the local government to be self-monitoring. It really isn't in their mandate they have and it certainly is not sometimes politically expedient. It must be remembered that city projects often have very significant and serious environmental impacts. The city of Niagara Falls has two right at the moment: One is the Mountain Road dump expansion and the second one is the current expansion or modification of its waste treatment plant. Both of these projects could of course, if improperly

designed, have a significant impact on the neighbouring areas.

The third cornerstone, in our opinion, is the weakness of relying on policy statements. It was our experience that clear, legally defensible legislation is imperative. Policy statements just won't suffice. The legislation must also have teeth in it, like the Environmental Assessment Act. Until we took the city of Niagara Falls to a hearing, we frankly did not get what we were asking for and we got these kinds of comments: "Well, the legislation exempts us from this. There's a grandfathering clause that comes into effect on that," and so on and so forth. Our experience would seriously challenge the wisdom, in this type of project, of having the municipality simply have to be consistent with environmental policies. I think it's too naïve. I think it's too simplistic a concept.

Our experience was also true with the Niagara Escarpment act. The entire area that was in question is under the planning and developmental control of the Niagara Escarpment Commission. Originally, the staff of the commission recommended against the expansion and yet the commission itself, which has political appointees, voted yes. Legislation, again, is imperative.

There was, or still is, an amendment passed to the Niagara Escarpment plan, amendment 52 which, to the layman, says that it deletes the use of dumps and dump expansions as a permitted use on the Niagara Escarpment. Despite this, the Mountain Road landfill was allowed to go ahead. The commonsense view to the citizen is that if the local agency had stuck to its guns, we wouldn't have had to go to court. Again, it's the issue of whether local groups have in their mandate total commitment to environmental concerns.

Fourth is the concept of openness versus the perception of corruption in land use planning. Our experience was that there is corruption of a sort. I'm not talking about people personally gaining financially; I think your proposal covers that and tightens that up. The kind of corruption I'm talking about is total, open honesty....

After our group made a formal presentation to council, we were invited by the mayor, Wayne Thomson, to hold several sit-down sessions with Niagara Falls city staff and we did have those sessions. Margaret Harrington invited us to a sit-down session as well with the MOE. We had a variety of questions and concerns, but quite frankly the fact was that the original plan was not altered based on any of our concerns.

The fifth and final key element that we would like the commission to consider is the willingness of local councils and local agencies to negotiate with a third party. Our experience has been that municipal councils are used to getting their own way and they are just not committed to negotiating or mediating with interested third parties.

As mentioned earlier, we did have several meetings with the city of Niagara Falls, but the record is that not a single concession was given at this level. We asked for some rather inexpensive things, like extra fencing. We asked for a few extra test wells right along the edge of the property where our subdivision is. We were not given any of those. But when we got to the final hearing, of



course, and it's in the report, we did get them.

As well, we asked for some expensive things. We asked for proper hydraulic containment on the site and proper drainage systems and we did get those. Some of them we did not get, though. We did not get a methane gas collection system that we asked for.

**1610**

The important thing is, after the fact and after this is all over, we do have our set of guidelines, and the local neighbours are well aware of these. In fact, we have complained this current year, and give the local MOE its due, it has issued about 20 citations so far this year to the dump in terms of its operation. Unfortunately, I have to report we still have somewhat of an adversarial relationship. You do mention that this is not good, but sometimes unfortunately it's necessary.

To sum up, our experience with the city of Niagara Falls and the local offices of the Ministry of Environment and the Niagara Escarpment Commission leads us to believe that this commission should take a far different approach when considering city-sponsored projects. We believe you should stay closer to what is currently in place in terms of full reviews and hearings, and we request that you consider maintaining the five existing elements that I've talked about: the intervenor funding; the full, exhaustive type of review that you have by the Ministry of Environment and by the Niagara Escarpment Commission, if it happens to apply; for city- or municipal-sponsored projects, we feel that policy statements are not the way to go and what you need is defensible legislation. Here you're dealing with sometimes large, fairly sophisticated staffs of engineers, and there are hordes of consultants and lawyers and everything else, so these folks are able to read between the lines and make all kinds of interpretations in terms of policy statements. Fourthly, for city-sponsored-type projects, we believe very strongly that the hearing process must be maintained, if nothing else at least as a fallback position to ensure openness and honesty and full disclosure.

Lastly, for all this trouble and effort and expense, the hearing process does produce some good board decisions, and having a document like this is frankly worth its weight in gold as far as local citizens are concerned, because it is the key to keeping things on track and keeping the dialogue and the negotiation and mediation going in a constructive way. It does allow us to talk on a fairly level plain with the agencies that we're dealing with and it allows us to not have to go as much to the media and the protest route and all that kind of thing.

That, ladies and gentlemen, is the basis of my presentation. I do have one question I would like to ask of the commission, but I'm open to questions now.

**Mr Grandmaître:** Tell me a little more about your experience with the NEC, the Niagara Escarpment Commission. You didn't seem too pleased with their services or their—

**Mr Perry:** No, I was extremely disappointed. I actually used to live in Mr Jackson's riding in Burlington, and my experience in Burlington was that the NEC was quite tough. I was involved with a golf course that

wanted to put an addition on its clubhouse and we were stonewalled. My family grew up in Burlington and we had some marvellous experiences walking along the bluffs there. I'm extremely fond of the Niagara Escarpment from my own personal experience, and I was quite disappointed in the reaction and the importance that they placed on the escarpment in this end of the province.

**Mr Grandmaître:** Did you know that eventually these responsibilities will be turned over to the respective municipalities surrounding or along the Niagara Escarpment? What are your thoughts on giving back that responsibility to local authority?

**Mr Perry:** God help us.

**Mr Grandmaître:** So you want to see the NEC in place for many years to come.

**Mr Perry:** I would, yes. As I say, I was disappointed in their reaction to the fact that they did not stick to the guns in terms of what their planning staff had recommended. I was quite disappointed. But I understand that politics and funding and taxes sometimes override these things.

**Mr McLean:** I want to thank you for coming today to present the five points that you've talked about. Has the Mountain Road dump been approved?

**Mr Perry:** Oh, yes, it has.

**Mr McLean:** It has a nine-year approval rate, has it?

**Mr Perry:** No, it's not. It's actually officially five. Despite what you read in the press, it's five with a conditional two.

**Mr McLean:** Is it for the whole area?

**Mr Perry:** It's for the city of Niagara Falls, yes.

**Mr McLean:** I want to say that the issues you raise with regard to hearings—the lady before you was excellent too with regard to people being heard, and that's the whole thing I'm concerned about: With the shortened process we have here, are the people really going to be listened to? It appears to me that some municipalities today think that when they're in power they can do what they like and they're not listening to the people. I hope that what we have heard here today is certainly part of the overall process, because people have got to be listened to. I appreciate you coming. Thank you.

**Ms Harrington:** Thank you very much, Mr Perry, for coming. I think from the way you have presented it, it is very well researched and you have a heartfelt commitment to what you are saying, a real example of grass-roots involvement in a process, and I thank you for that. Do you have a copy of the brief that you have presented?

**Mr Perry:** No, unfortunately I don't. I don't know whether there's a reporter here today or not.

**The Chair:** Yes, it's on Hansard.

**Ms Harrington:** It would be very nice if I could get a written copy of what you have there.

**Mr Perry:** I will do that.

**Ms Harrington:** You have pointed out that there certainly were problems with the process in the past and they have built up over many years, in fact decades. It's a cumbersome process, and you've even indicated that it

may be unfair in some circumstances. That's the whole point of this piece of legislation, to tear away all that buildup of massive problems in the system and try to put something in place which works and works well.

Now, you indicated a couple of problems, first of all, an adversarial system. We really want to change that personality of the system so that before the decision is made, at whatever level, whether it's at council or at the OMB or—there is input from the people affected. We heard this very clearly yesterday in Toronto when we were briefed by the ministry and others involved in this legislation.

Secondly, you talked about provincial policy statements. The idea of this legislation is to make them stronger and clearer so that the planners all over Ontario and the citizens know what is protected in this province. So hopefully this will in the long run help citizens like yourself everywhere.

I want to go back to some of your points. First of all, you talk about intervenor funding. Who paid the \$150,000 cost?

**Mr Perry:** Our friends at the city of Niagara Falls.

**Ms Harrington:** The actual citizens donated this amount. Is that what you're saying?

**Mr Perry:** No, no. The city of Niagara Falls.

**Ms Harrington:** Oh, the city. Okay.

**Mr Perry:** Actually, I'm a taxpayer, so it was my money.

**Ms Harrington:** You also talked about the weakness of the policy statements, and I'm saying to you that we are strengthening them. Your fourth point was about the openness of city council and the perception of corruption in regard to land use planning.

**Mr Perry:** If I might just correct that perception, the comment does not relate to city council. The concept there relates more to city staff, in that it's simply not a level playing field. My opinion, and if I were an engineer my engineering opinion, on what is necessary—it's just not a level playing field with what the city staff engineer thinks. That's why the hearing process is so important. You need a technical referee.

**Ms Harrington:** To be able to be heard and to negotiate on an equal level.

**Mr Perry:** That's right.

**Ms Harrington:** Okay. I hope everyone around this table as well as the staff of the ministry are listening to what you are saying, because we really do want the citizens to be heard in this new process.

Finally, your fifth point was about local councils negotiating with third parties. Well, that leads us to what we were just talking about. You found that normally they don't want to listen.

**Mr Perry:** They're quite prepared to listen, but that's all they're prepared to do.

**Ms Harrington:** Would you have any suggestions then as to how we can work with people to encourage city councils to do more than just listen?

**Mr Perry:** I guess you have to strengthen their

mandate. You know, it's which comes first, the chicken or the egg? I'm not sure what the answer is. I hate fixing anything that's not really broke, and I don't really think this thing is broke. I think it works reasonably well. You've got good legislation. The Environmental Assessment Act, in my opinion, is sound. I think the Niagara Escarpment plan is sound. You just need local agencies to challenge local municipalities on their sponsored projects and stick to their guns, on all the technical points.

**Ms Harrington:** Hopefully, this is the beginning of a process. I think all levels of government are beginning to realize now that the future is different with regard to what we safeguard in this province, which is our environment, whether it's the agricultural lands or whether it's the wetlands or whether it's the woodlots. There is a different approach.

I think someone else has a question here.

**The Chair:** Mr Wiseman, just a—

**Mr Wiseman:** I have five things. I'll talk to him later.

**The Chair:** Very well. Mr Perry, we thank you for participating in these hearings today.

**Mr Perry:** Okay. Do I get to ask a question?

**The Chair:** Yes.

**Mr Perry:** Good. That's what I thought.

**Mr Grandmaitre:** We're open.

**Mr Perry:** You're open; okay.

**Interjection:** We're open now.

**Mr Perry:** Perhaps someone could clarify what you mean by the fifth major change to the Planning Act, and I'll read it to you:

"Municipalities would be able to further integrate environmental concerns into the planning process by adopting an optional process which may be considered under the Environmental Assessment Act."

I could find nothing in the literature that I read that even mentioned that.

**Ms Diana Dewar:** My name is Diana Dewar, from Municipal Affairs. The legislation has a provision in it which allows municipalities to adopt a process where, where they are examining alternatives in the preparation of an official plan or an official plan amendment, that will receive credit, if you like, when the environmental assessment is being done. So it's a way of linking the official plan process, and those requirements would be the requirements of the Environmental Assessment Act process.

**Mr Perry:** Do you have any literature on that optional process?

**Ms Dewar:** That process will be set out in a regulation, and that is being worked on by our staff right now.

**Mr Perry:** Oh, I see. Okay. Thank you.

**The Chair:** Thank you very much.

Three things before we break off: First, the bus will leave at 4:45. Second, the committee will start its hearings at 8:30, not 9, which complicates our life a little bit. I think that's it. We'll adjourn until 8:30 tomorrow.

*The committee adjourned at 1625.*





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*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Eddy, Ron (Brant-Haldimand L) for Mr Murphy

Grandmaître, Bernard (Ottawa East/-Est L) for Mr Chiarelli

Hayes, Pat (Essex-Kent ND) for Mr Malkowski

Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick

McLean, Allan K. (Simcoe East/-Est PC) for Mr Tilson

White, Drummond (Durham Centre ND) for Mr Bisson

Wiseman, Jim (Durham West/-Ouest ND) for Mr Winninger

### **Also taking part / Autres participants et participantes:**

Ministry of Municipal Affairs:

Halen, Curt, senior planner, municipal planning policy branch

Hayes, Pat, parliamentary assistant to minister

Perron, Linda, legal counsel

Sidebottom, Peter-John, senior policy adviser, local government policy branch

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Stobo, Carolyn, research officer, Legislative Research Service



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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 31 August 1994

Standing committee on  
administration of justice

Planning and Municipal Statute Law  
Amendment Act, 1994

Chair: Rosario Marchese  
Clerk: Donna Bryce

# Journal des débats (Hansard)

Mercredi 31 août 1994

Comité permanent de  
l'administration de la justice

Loi de 1994 modifiant des lois  
en ce qui concerne l'aménagement  
du territoire et des municipalités

Président : Rosario Marchese  
Greffière : Donna Bryce

*50th anniversary*

*1944–1994*

*50<sup>e</sup> anniversaire*



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Wednesday 31 August 1994

Mercredi 31 août 1994

*The committee met at 0833 in the Delta London Armouries Hotel, London.*

PLANNING AND MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT DES LOIS  
EN CE QUI CONCERNE L'AMÉNAGEMENT  
DU TERRITOIRE ET DES MUNICIPALITÉS

Consideration of Bill 163, An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes related to planning and municipal matters / Projet de loi 163, Loi révisant la Loi sur la planification et l'aménagement du territoire de l'Ontario, la Loi sur les conflits d'intérêts municipaux, et modifiant la Loi sur l'aménagement du territoire et la Loi sur les municipalités et modifiant d'autres lois touchant des questions relatives à l'aménagement et aux municipalités.

**The Chair (Mr Rosario Marchese):** I call the meeting to order. In order to keep to our schedule, we have to begin on time.

Welcome, Ms Cunningham. Nice to see you here.

**Mrs Dianne Cunningham (London North):** Welcome to London, Mr Chair and committee members.

**The Chair:** We're happy to be here.

CITY OF LONDON

**The Chair:** Welcome, Mr Hopcroft. It's early in the morning but we're all ready for you. You have half an hour for your presentation. If you want to have the members ask you questions, please leave as much time as you can.

**Mr Grant Hopcroft:** Thank you very much, Mr Chair. Welcome to London, first of all, and thank you to the committee for squeezing in the city of London's presentation so early in the morning. I'll keep my presentation fairly brief so that we do have an opportunity for some questions and answers at the end.

I'd like to address several parts of the bill, the first with respect to the Planning Act reforms. For the most part, London council is satisfied with the changes reflected in the draft bill at the present time in so far as the Planning Act reform is concerned. We do have two outstanding concerns, however, which were reflected in a submission that was sent to the minister back in early August.

The concerns are with respect to goals B7, B8(b) and B8(c), which continue to make reference to sufficient reserve water and sewer plant capacity being available to accommodate new development. The city continues to

object to this policy as the method for determining sufficient reserve capacity for these services, or at what point in the development approval process sufficient reserve capacity must be available has not yet been resolved.

Our practice has always been to gauge the amount of development which is prepared to come on stream. We have, in the city of London, always planned very carefully to ensure that capacity is there. We are concerned, however, that the way in which this could be interpreted could preclude approval of plans which should be approved to ensure that there's a sufficient supply of housing units available or lots available for development.

We are concerned as well as to the impact of Bill 120 on the calculation of reserve capacity, because it does effectively, in many of our neighbourhoods, double the existing densities. We do have concerns about how those calculations will be completed.

The other concern the city has is with respect to the housing policies, goal C, which we feel includes unrealistic and unreasonable targets for affordable housing. We feel that the concerns which we have expressed earlier have not been reflected in terms of the percentages that are to be applied.

With respect to the other provisions of Bill 163, dealing with disclosure of interest and open meetings, basically the city of London has endorsed the brief of the Association of Municipalities of Ontario, which I understand the committee will be receiving on September 13. However, I would like to highlight several aspects both of what AMO will be submitting in terms of what's been endorsed by London and a couple of concerns which we as a city have with respect to some of the aspects of those provisions.

The first item, with respect to disclosure of interest, is the prohibition against members of council being able to seek council action on matters of personal affairs. For example, if my house contravenes the zoning bylaw in a minor way, where a minor variance would normally be sought, the legislation as it presently sits precludes me from hiring an agent to appear before the committee of adjustment to seek that minor variance. So while we continue to agree that it is improper for the council members themselves to appear before council, asking for something which would confer a personal benefit, there should still be the ability for them to retain others. Otherwise, they could be placed at a very serious disadvantage in terms of their own personal affairs.

The next item I would like to address is with respect to the disclosure requirements which will take effect after this election. We are for the most part satisfied with the



basis of disclosure. It's something that affects members of the Legislature and we appreciate the fact that you would like to have basically the same types of rules and same disclosure requirements apply. However, we continue to feel that the disclosure should apply to candidates for office as well as members who are sitting on councils so that council members are not placed at a relative disadvantage in the context of an election campaign, and if it is that important, the electorate should have an opportunity to see what potential conflicts might arise from a member's holdings prior to him or her being elected.

The next item is with respect to the commissioner. We are concerned that the legislation as it now sits provides for basically dual recourse on the part of citizens. They can complain to the commissioner. The commissioner can investigate. If the commissioner finds no wrongdoing, the citizens then have the opportunity to pursue the matter through the courts. I guess our position is that if the commissioner has found no wrongdoing, that determination should be final and that the commissioner be given sufficient authority to deal with complaints in a way that can in fact be final.

The last issue is with respect to the removal of the saving provision in the current legislation for bona fide error. As the legislation stands now, council members can seek legal advice as to whether or not they have a disclosure. I'm perhaps in a bit of an advantageous situation because as a lawyer I treat those matters very carefully and probably have a better chance than most to avoid conflicts of interest being undisclosed. But most council members who do not have legal training have to rely on legal advice as to whether or not they should disclose an interest. The amendments would remove that defence from members of council and would require the courts to impose a penalty even where council members have acted in good faith.

We feel that saving provision is very important and should be left in the legislation. We do, however, welcome the changes in the legislation that would permit the courts to vary the penalty. We feel that's a step in the right direction and wholeheartedly support those aspects.

0840

The last two items I'd like to address pertain to, first, section 55 on open meetings and in particular subsection 55(9), which requires "...a meeting shall not be closed during the taking of a vote." We feel that the legislation has quite rightly recognized the fact that there are certain matters of a personnel or contractual or legal nature that should be dealt with in camera. We are concerned that subsection (9) prevents council from giving direction on those matters during an in camera session.

We follow a practice in the city of London where all in camera matters are released at some point and voted on in open council. However, we do need to give direction on those matters in the interim. If I can give you one example regarding property acquisition, where you may have several sites that are under consideration for acquisition or for disposal by council, it would require offers to be submitted or received and in most cases the clerk and the head of the council signing those papers to indicate

council's intent. If I were a mayor or a city clerk, I would be most reluctant to sign papers without having a vote on the record that in fact would permit me to act in that fashion. So, we would urge the committee to consider amendments to subsection (9) which would still permit votes to be taken in camera on at least an interim basis, pending final release of those decisions of council.

The last matter is something that's not addressed in the legislation at all, and I would like to thank my friend Mr Smither, who I understand you will be hearing from later, for raising this during a session at the AMO conference last week. It has to do with the matter of privilege. As members of the Legislature, you enjoy absolute privilege for comments that are made in the Legislature. Municipal council members enjoy only qualified privilege with respect to comments that are made during the course of council meetings.

With the new requirements in Bill 163 for matters to be considered in open meetings that previously may have been considered in camera, and the very strict limitations on what can be considered in camera, we feel it's of paramount importance that there be amendments to give council members absolute privilege, because matters that previously may have been dealt with in camera because of their sensitive nature or the potential for litigation will now be required to be dealt with in an open meeting.

Given the basic thrust of the bill, which is to put on council members much of the onus and many of the responsibilities that you as members of the Legislature have, we feel it's only appropriate that we have some of the privileges that you share as well.

I thank you for the opportunity to present briefly some of our concerns. We will follow this up with a written brief for the committee at some point within the next week and a half or so. I welcome your questions.

**Mr Bernard Grandmaître (Ottawa East):** Welcome to your famous city, Grant. Let's start with your letter—I shouldn't say "your" letter—but AMO's letter of June 30 to the minister, highlighting some of AMO's concerns towards this piece of legislation. Are you familiar with this?

**Mr Hopcroft:** I don't have a copy of the letter with me but I'm aware of the basic—

**Mr Grandmaître:** I was going to ask you if—

**Mr Hopcroft:** —content of it because, as you know, I'm a member of the AMO board as well.

**Mr Grandmaître:** You highlighted a number of concerns. The fact that you were a member, or your association was a member, of the advisory task force on implementation—or Mr Dale Martin's committee—didn't mean that you supported the legislation. Have most of your concerns of June 30 been, let's say, resolved?

**Mr Hopcroft:** I should say that in terms of the Planning Act aspects of Bill 163, the city of London's position does not endorse some of the concerns that AMO has brought forward. Basically, our council's position on the Planning Act amendments in Bill 163 is that our concerns are limited to those two matters I addressed in the opening part of my comments.

AMO, however, has had further concerns which they

feel should be addressed in the context of the legislation. I'm sure they'll be bringing those forward on September 13, but London's concerns are those two with respect to what we feel is an unreasonable change in terms of the affordability criteria in the housing statement and the requirements with respect to capacity for water and sewer, which we feel need to be better defined and defined in a way that allows some flexibility in terms of approval of development.

**Mr Grandmaître:** The Conflict of Interest Commissioner, Grant, what about the cost of this new office? As you know, the cost will be borne by municipal governments. What are your thoughts on this?

**Mr Hopcroft:** Well, I can indicate that we originally had very grave concerns about the need for a commissioner. I think we see some benefits to having a commissioner in place provided that he or she is capable of making final determinations and that the commissioner's office will be prepared to give council members advice when they have questions as to whether or not, in a particular fact situation, they should be disclosing an interest.

We do see the commissioner as being able to provide a service to members of council, but that's clearly contingent on our concerns regarding the finality of the commissioner's decision being put in place. If we're still going to be subjected to court proceedings when the commissioner's found no wrongdoing, we see that as creating needless duplication and expense.

**Mr Grandmaître:** What about the cost to councillors who are, let's say, charged under the conflict-of-interest legislation, the cost to councillors or municipal people?

**Mr Hopcroft:** Obviously, there are considerable costs, both in obtaining opinions and in defending actions that are brought. It's our hope that with the commissioner investigating matters prior to charges being laid, many frivolous complaints will be weeded out.

On the other hand, at our AMO board meeting a councillor from Metropolitan Toronto was charged \$10,000 for a conflict-of-interest opinion on a matter that she obviously wanted to vote on. The easy way out is always to disclose an interest if you're unsure, but where there's a matter of extreme importance to your constituents I think a council member has a duty to vote if that's possible. That type of expense is something that, hopefully, could be avoided if the commissioner's office is in a position to give advice to members of council on whether a particular fact situation presents a conflict.

I think where the commissioner has found wrongdoing, clearly the matter needs to be aired before the courts. There are times when the public does question the ethical standards of politicians. I think it's the nature of the animal that sometimes a few bad apples creep in and it's in all our interests to see those kinds of people weeded out to preserve the ethical standards.

**Mr Grandmaître:** Open votes or votes in camera, can you repeat what you just said? Maybe I missed out. You wanted this legislation to allow votes in camera?

**Mr Hopcroft:** Yes. This is the example I used. Say council wants to buy a site for a public facility and it wants to put an offer in on that site. The legislation, as it

now sits, says you cannot vote in camera. You have to vote in public. The dilemma we're faced with is, say you want to put in an offer for \$500,000 but you're negotiating with others as well; you don't want that offer to be made public. The mayor and the clerk have to submit an offer, and without a council vote I certainly wouldn't place myself in a position of second-guessing council, particularly where it's been a matter of some contention within council. I think, to protect the officials and the head of council in terms of these kinds of negotiations, there needs to be a mechanism where council's will can be reflected in camera so those actions can be taken.

0850

**Mr Allan K. McLean (Simcoe East):** Just to follow up on that briefly, if you're in council and you're in camera, you could have a motion to come out of camera and go back into regular session and make the motion then, couldn't you?

**Mr Hopcroft:** The trouble is that once you've voted on the matter in public—if I can just grab the section here; I'm sorry, I can't put my finger on it at the moment—but it's our understanding that when a vote is held in public the subject matter of that vote must be disclosed to anyone making inquiries, so the concern would be that other property owners, for example, who may be also trying to have the municipality purchase land from them, or who may be trying to sell land to the municipality, would be able to find out the basis upon which council's negotiations are proceeding.

**Mr McLean:** Were you anticipating having the privileges of members of council in camera or in open council, or at all during the council meetings—that they would have the same privileges a provincial member has with regard to what he says?

**Mr Hopcroft:** Obviously, in terms of in camera discussions, those generally would involve only members of staff and members of council who are present. I wouldn't see there being a distinction between in camera and open meetings. I think the importance of allowing council members to speak their mind on issues of public importance is paramount.

**Mr McLean:** Have you seen the comprehensive set of policy statements the ministry has issued?

**Mr Hopcroft:** Yes.

**Mr McLean:** With regard to item B, economic, community development and infrastructure policies, on page 7, the first discussion you had was with water, sewers, housing and development. I was wondering if that policy statement on page 7 didn't cover what you were talking about with regard to development, water and sewage.

**Mr Hopcroft:** I'm sorry, I don't have a copy of that in front of me, Mr McLean. Our concern is with respect to the definition.

**Mr McLean:** Page 7, second paragraph from the top: "Development should be serviced by full municipal sewage and water services wherever feasible. Where full municipal sewage and water services are not provided, and where site conditions permit, multilot/unit development should be serviced by public communal services. Where the use of public communal services is not



feasible, and where site conditions permit, development may be serviced by individual onsite systems. Development on partial services will be discouraged except in the situation where a public communal system is required to address remediation of failed individual onsite systems."

**Mr Hopcroft:** We certainly support the intent. For us to say anything different after our recent boundary discussions would seem a little hypocritical. The concern we have is the way in which reserve capacity is calculated, again particularly with the changes from Bill 120 which double densities in some parts of our community. We still don't have a ruling on whether that affects our reserve capacities. The way we've approached this in the past is that we may have, for example, two subdivisions approved within the watershed of one sewage treatment plant. When you take the full buildout of both those subdivisions, it may in fact exceed our capacity, but we recognize that in many cases these take five to 10 years to be fully built out. We have plans on the books to expand that capacity as time goes on. That's the concern, that it doesn't allow you to stage the expansion of your capacity to keep up with building it. It requires you to have excess capacity in place up front.

**Mr McLean:** My final question, Mr Hopcroft, is with regard to this fall; the elections are going to be in November. This legislation is not going to be passed until way on in December. They're telling me that the candidates will then have to fill out the forms, in January, of the conflict of interest. What about this fall? The ones that are running now are not fully aware of what these conflict rules are going to be because they could be amended in the next few weeks, and could be amended in committee in third reading. What do you say to those people who are running this fall who perhaps may find themselves in a difficult situation come January?

**Mr Hopcroft:** I think it's incumbent on anyone running for office to find out what they're getting into before they file their nomination papers. I think clearly it would have been preferable if these amendments could have been finalized long before now. It's getting very close to the point of decision for members and clearly it's going to have an adverse effect on some members.

**Ms Margaret H. Harrington (Niagara Falls):** I want to clarify a couple of the things you mentioned at the beginning with the Planning Act reform. First of all, with regard to reserve capacity, I think you've explained most of it. What you're saying is that most municipalities do things in a staged manner so that the example you gave of approving subdivisions, where the capacity was not actually in effect at that time—you feel it's too strict, the way we are going?

**Mr Hopcroft:** Yes, particularly when you look at the housing policy statements with respect to having a certain amount of service land available for development. We've always taken the approach in London that we would like to see maximum choice in terms of availability of service land, that one subdivider doesn't have the market cornered. Recognizing that we have a certain range of development or expected development to come on stream each year, as long as we have the capacity for that range and enough of a cushion for a year or two into the future,

and as long as we have plans for expansion to build out to the ultimate built capacity and we have the financial capacity to do it, that should be sufficient. You shouldn't have to certify that, as at a particular point, you have capacity in your sewage treatment and your water treatment plants for everything that's approved out there, regardless of how many years' supply that represents in terms of your growth.

**Ms Harrington:** I would imagine in some instances across this province that would lead to running into some difficulties.

**Mr Hopcroft:** That may very well be the case.

**Ms Harrington:** But you're saying it is a common practice.

**Mr Hopcroft:** It certainly has been in our community and we think it's worked very well. In these days, it just doesn't make sense to be building capacity years ahead of it being needed. We've got so many competing demands for our money these days, it just doesn't make sense to spend money before it has to be spent.

**Ms Harrington:** The other question was with regard to your statement that it's an unrealistic housing policy, something to that effect. I don't have a copy of your brief. Would you clarify what you meant by your concerns around the housing policy?

**Mr Hopcroft:** In terms of the housing, the targets for affordable housing are being increased to 30% from the current 25%. In addition, the new housing affordability policies require that no less than half the affordable housing required be affordable to the lowest 30% of household income distribution. That's a new requirement, a more onerous requirement than the existing housing statement. In the context of our community, we see that as setting an unreasonable and an unnecessary standard.

**Mr Drummond White (Durham Centre):** Thank you very much, Mr Hopcroft. I believe we spoke only a week or so ago in Toronto. You appear on many occasions under different guises.

**Mr Hopcroft:** I have many hats.

**Mr White:** Indeed. I'd like to take up with you the issue of—there are many, many things in your brief that are of interest, but the issue of privilege is one of them. You were discussing the fact that municipal politicians have a limited privilege. I wonder if you could describe that and what kind of privilege you would recommend.

**Mr Hopcroft:** What I'm recommending is the same privileges you enjoy as a member of the Legislature for statements that are made in the Legislature.

**Mr Jim Wiseman (Durham West):** I'm not so sure we should have that privilege.

0900

**Mr Hopcroft:** I think particularly when you look at the requirements in the legislation for presumably more matters, you're going to expect more matters to be discussed in public as a result of these amendments than were previously. Many of those matters—and, to some extent, I guess I'm speculating on the practices of other municipalities, but where you're dealing with a matter of some sensitivity in terms of potential for libel, I think the

tendency would be to deal with those to the extent that you can in camera. I think there are limitations on placing those matters in camera with the new legislation, and to the extent that you are requiring council members to deal with those matters in public now, they should be extended the same privileges as you have as a member of the Legislature to speak their mind on those issues without fear of someone launching a suit for libel or slander.

**Mr White:** Could you go back to the first part of my question, which is the rights you presently enjoy?

**Mr Hopcroft:** Okay, the qualified privileges that we enjoy at the present time are limited to the extent that we can in fact be taken to court and the onus is on the member to show that first of all there was truth and that the matter does not extend beyond fair comment in the circumstances. The standard of fair comment is one where there can be some uncertainty and the courts of course will have the jurisdiction to rule on that matter.

Whether a council member has some uncertainty in their own mind as to whether something may be a fair comment or not may preclude them from bringing that matter forward in the context of a debate. It may be information that is germane to the issue and should be brought to the attention of council prior to the vote. But, clearly, to the extent that a member is afraid they could be sued and, believe me, there are lots of people out there looking for ways to embarrass members of council, the issue may not receive full debate and full consideration by council. Does that answer your question?

**Mr White:** Yes, thank you.

**The Chair:** We ran out of time. We appreciate your taking the time to give us your feedback on this particular bill and we appreciate the fact that you did it so early in the morning.

**Mr Hopcroft:** Thank you for fitting us in and we will be following this up with a written brief. I apologize for not having one this morning, but I've been a little under the weather the last couple of days.

#### TOWN OF EXETER

**The Chair:** We invite Mayor Bruce Shaw, Mr Rick Hundey and Councillor Bob Spears. Welcome to this committee.

**Mr Rick Hundey:** Bob Spears is a member of our council in the town of Exeter and I'm Rick Hundey. I'm the town administrator. Very quickly, I thought I could give you a brief introduction to the town of Exeter. We're a very small community, 4,300 people, and we thought it would be useful for you to hear a small-town perspective. To give you a feel for Exeter, someone like Bob would be a member of council—a small amount of recompense for that, roughly \$4,000 a year—sits on committees on a volunteer basis. From a staff perspective, we have people who wear many hats. I'm the town administrator but I do many other things as well. Two weeks ago, I caught a dog running at large. I'm quite proud of that.

Just a brief illustration of the kind of community we're dealing with: We try to keep things straightforward and simple and we're a bit concerned about this legislation

because it may become more difficult for us to perform as a municipality because of the complexities it introduces for us.

I have a brief that I think some of you have. Unfortunately, I didn't realize there were so many people on the committee. I brought 15 and we're short. Nevertheless, I'll go through the brief.

We've looked through this legislation. We've been involved in the process at earlier stages as well. We support the intent of what the committee has in front of it. We support the idea of delineating roles and ensuring that provincial policy is stated up front and that we know what it says. We think that open and accountable government is important but we also think the legislation that you have, Bill 163, has some flaws that affect all municipalities and, as I said, we'll try to give you the small-town perspective.

In the past, just following what's going on and participating in what's going on, we get the feeling that what's been said hasn't really been heard, and that's really our first general observation. We think that a lot of what's been said before hasn't been heard and what will be said to you now and in other hearings has been said before and perhaps hasn't been heard and should have been heard.

Looking at that second point in the brief under the Planning Act, provincial-municipal relations, one of the things we've noticed is that there's a move afoot to move municipalities into a position of greater authority, a wider-stated authority, guaranteed in legislation. There's also a move afoot to empower municipalities in a more flexible way through flexible enabling legislation. We think that what we've got now in the Planning Act amendments is an approach where we're expected to stringently follow policy set out by the province in respect to the word changes. We have "regard for" being changed to "being consistent with" provincial policy. That suggests to us a much more stringent approach and perhaps eliminates the flexibility that we feel exists now under the current act and should exist under the future act.

The variation that exists across the province is something that we think should be recognized in our legislation and if you have terms like "be consistent with," that implies stringent adherence rather than "regard for".

We also noticed that the content of official plans is to be prescribed, as is the plan process. We do a good job of local planning, but in a small community we often don't avail ourselves of the advice of outside experts, something that's rather expensive to do. We do a reasonable level of planning, we're concerned that the prescriptions you'll be writing for us will require us to do more than is necessary for small community needs.

Then the fourth point in that particular submission or that particular area has to do with the fact that we expected to see counties having the right to have local plan approvals. That's not something that's automatically given under the new act, it's only going to be given to prescribed counties. What that means, we're not sure, but we think that counties, like regions, should have the right to approve local plans. Our concern here, of course, is



that the approval process is quite protracted at the provincial level and we think the approval process can work quite well at the county level.

Our third point under the Planning Act has to do with municipal accountability. The policy statements that are associated with the Planning Act are rather detailed. We see that there will be regulations coming and guidelines coming. We see that all these things will prescribe the way in which planning is to be done at the local level and we're a bit concerned that what will happen is, the outcome of policy at the local level will be predetermined. Things will have been set out in such a way and such a pattern as to result in pretty well only one answer: the answer that's written for municipalities by the province. So what I see happening is municipalities echoing the provincial position and implementing policy but not developing the policy in concert with their community. In effect, I think what could happen is both the councils and the public are disenfranchised in that kind of scenario.

Our fourth point has to do with the process. We're not entirely sure what's coming down the pipe. There are two aspects of the package that really aren't available yet to municipalities. We have four things coming. We have the legislation, which of course we've seen. We have policy statements, which we've seen as well. There are regulations that are being drafted that we haven't seen—I'm not sure if they're out yet—and there are also guidelines that will assist municipalities in carrying out all these rules under these policies, regulations and statutory provisions.

It would have been good to know what's coming, and I illustrate this point in our fifth argument. There's one question that really concerns the town of Exeter that has to do with planning for infrastructure. Here the point is, and it has been made previously, that the party that pays for infrastructure should do the planning for infrastructure. At one point earlier the suggestion was strongly made that the upper tier, ie, in our case a county, would do the planning for infrastructure: hard services, water, sewers.

In our situation, if that were done, they would be planning for services that, with the help of the province, the town of Exeter finances. That's fundamentally unfair and it's also illogical. If the regulations coming out and the guidelines coming out call for upper-tier planning of infrastructure, then we have a problem with that. We think it's a serious problem. We do think the municipalities that pay for a service should have the planning responsibility for that service, and that's something we think you should look at closely.

**0910**

There's a footnote, and I apologize. If you look at the footnote, it starts on page 3 and goes to page 4. That's a rather important footnote to the town of Exeter. One of the things in your policy statements talks about the way in which planning should be done across the province. The one-shoe-fits-all-sizes approach here is something that bothers us.

In the town of Exeter we've got 4,300 people. If our growth is even 5% per year and we're out of servicing capacity, we have to plan for that growth. The policy guidelines require us to consider projected growth

through statistical analysis. At 5% per year it's uneconomic for us to plan expansions on that kind of basis. Naturally our planning's going to be based on financial considerations. If it costs us \$3 million to expand our sewage treatment system to grow 5% more per year for the next 20 years and only another \$100,000 to grow at five times that rate, the municipality's going to spend the extra \$100,000. Growth in small communities has very little to do with population projections. You can realize that at 4,300 people, all it would take would be one new industry or one new subdivision—in other words, the opportunity to grow—to completely throw projections out of whack.

We think you should consider the variations in municipalities across the province before saying that there's one way to do this work and it's this way. There are many ways to do this kind of work.

Our sixth point has to do not so much with the Planning Act but what's wrong with planning in general. We think that in rural Ontario, where municipal government has not been restructured, planning problems have more to do with structure than with the Planning Act. We think many of our problems have to do with boundary problems, they have to do with too many municipalities, many of which have insufficient resources to do all the work they must do as well as they should do it, and in some parts of Ontario we even think single-tier government may be worth considering. Local government in some parts of Ontario is too complicated for the population size and for the needs and can be simplified. If those things are done, that will advance the efforts of municipal planning as much as any changes in the Planning Act.

Our seventh point again has to do with municipal empowerment, or municipal autonomy. The Planning Act as proposed in 163 says that counties must do official plans and local municipalities may do official plans. We suggest that your interests should be that there be official plan or planning coverage across the province, that in some places a county plan only will suffice, two tiers of planning would be useful, or only local planning will do the trick for you. If you insist on two tiers of planning, it seems to me you're giving a degree of emphasis to county planning over local planning that may be inappropriate.

I guess I'd conclude that point by reading the last sentence in point 7: "The act should empower municipalities to do planning in a way that fits their needs and circumstances," and again, the one-shoe-fits-all approach doesn't seem to make sense to us.

The eighth point is relatively minor. It has to do with minor variances. Now, Exeter rather likes the idea of having appeals heard at the council level. This is a local matter and it should be left there.

There are a few glitches that perhaps should be addressed. For example, if a committee of adjustment includes a council member, it's hard to see that kind of appeal going to the council. We just think perhaps your staff can look at that issue and recommend some province-wide solutions to that particular point.

The ninth item has to do with something we call a threat to local autonomy and we're going to suggest an

amendment to the act if it's going to proceed in the way it has started out. As you know, the act now allows and will allow a local municipality to do an official plan. A problem can arise, however, because of the fact that any county can require a county levy to pay for various county services. What can happen and has happened is that counties have charged full service, including a charge for local planning services not performed. There's nothing in law that prevents a county from doing that, and this has happened before. It's happening right now.

It seems to us that if a county provides a local planning service, that should be done only on an optional basis. To protect municipalities from arbitrary decisions of a county council to charge for a service not provided, a legislative amendment would be useful for consideration. That's contained on the top of page 7.

Those are the points we wanted to make on the Planning Act. We also had some points on the disclosure-of-interest section, if we can continue to that part. The main point is a general point, and that has to do with the concern that a small community has with respect to this kind of legislation. Small communities have part-time politicians, as you know, whose recompense is low and whose access to advice is limited. In those kinds of circumstances the natural concern that arises, not only in Exeter but in other small communities, is whether or not a more onerous or a more demanding disclosure requirement will discourage good candidates from running for municipal office.

That's the main point that Exeter wants to make. We're extremely concerned that requiring much more disclosure, in fact from our point of view intruding into matters that are rather private, will discourage people from running for municipal office, and in small communities that can be a problem.

We have a few specific points that we think might be worth considering under the disclosure section. In the first place, we think the role of the commissioner might be to give advice. We're a bit worried about the cost of getting advice, especially in new legislation. In the second place, if there is a ruling done by the commissioner that there is no conflict, we've noticed that there is an allowance for further appeal to the courts. We think once a ruling has been made that there's no contravention, that's where the matter should end.

We think also that there should be some allowance through the act for the suspension of penalty where a contravention has been made inadvertently.

We also think, finally, that the right of privacy is something that should be looked at. We don't have specific recommendations in that regard, but we think that's a very serious concern in small communities, where disclosure may discourage people from running for office.

We close by just underscoring that this is municipal legislation even though it's something the province is contemplating enacting, and because it's municipal legislation we have a very strong interest and a stake in the outcome of these discussions. We thank you very much for hearing our points and we hope you can take them into account as you conclude your work.

**Mr McLean:** I want to indicate to you that the first day of the hearings I asked the minister for a copy of the regulations. It seems impossible to get them, and yet in the Understanding Ontario's Planning Reform part of empowering the municipalities, it says there: "Counties must prepare an official plan within a scheduled time frame where required by regulation." Well, it would be kind of nice to know what time frame we're talking about here, whether it's two years, three years or five years. The parliamentary assistant said they're working on them, and perhaps if he's listening he could maybe give us what that time frame will be. Will it be three years or five years? Any idea?

**Mr Hayes:** To have the regulations?

**Mr McLean:** Yes, that they'll have to prepare an official plan, the county?

**Mr Pat Hayes (Essex-Kent):** Three years.

**Interjection:** Isn't it two?

**Mr Philip McKinstry:** I guess what we're doing there is, we really want to consult with the counties and think that issue through before we prescribe them. So that's why the regulations aren't available on that particular issue and why we haven't told the counties who actually is to have a plan.

**Mr McLean:** I see that you've read this legislation pretty well, because I see where you indicated that the two-tier may approve the official plan, and it will be interesting to see what happens there.

The plan for infrastructure, the issue that you raised, who pays: Well, that will be interesting, because I'm sure it'll be the local municipality that will be paying for any infrastructure work that goes on, whether it's the local government or the county. Is it your opinion that the county should pay? The county has the official plan. The county is going to be running kind of the infrastructure program. Would you feel it's the county or the lower-tier government that would pay?

0920

**Mr Hundey:** There are really two answers. One answer is, the county should pay if it's doing the planning. It only makes sense that if they're responsible for determining land use designations and associated servicing sizes and capacities, they should be paying for that. But on the other side of the coin, the community itself that is providing that service and then operating that service and the community which is growing around that service has the most interest in that particular matter. Despite the fact that I'm saying that if the county's doing the planning it should be paying, I believe that it's a local matter, especially in the county setting. It's a local concern. Therefore, it should be planned locally and financed locally. It's planned locally.

**Mr McLean:** The other question I have is with regard to the conflict-of-interest guidelines that are laid out. I really agree with you with regard to small-town Ontario. I know a case of a reeve of a village at the present time of probably 1,500 people who has a plumbing business. If he's going to have to disclose all of his business, it's going to be interesting, because metros are different from rural. Unfortunately, some people don't realize that, but



it is the case. How would you determine the two differences and where would you cut off the population?

**Mr Hundey:** That is a difficult question to answer. One thought that springs to mind is the possibility that the determining factor could be whether the politicians are full- or part-time. A full-time politician is likely to have interests that are secondary to the day-to-day work that person does, whereas the part-time politician obviously has something else that consumes his or her time on a full-time basis. Maybe that could be one of the distinctions. And because of the fact that these are small communities, maybe the information only need generally be released and be more limited. I'm sorry, that's about the best I can say.

**Mr McLean:** So we're saying to the parliamentary assistant there should be some changes in that aspect of conflict.

**Mr Hundey:** I believe there should be.

**The Chair:** Mr Hayes wants to make a clarification.

**Mr Hayes:** I think we have to be very careful here that we don't put something out in public that really isn't there. Mr McLean used the example of the councillor who's a plumber. All that individual has to do is say, "I own this plumbing business," not go through all of his assets and things like that. That isn't there.

The other thing is, I can understand your concerns, small-town Ontario, which I come from myself, but we do know that 40% of the complaints of conflict of interest come from municipalities with less than 5,000 population. So I think that just because you're the big city doesn't mean you're more likely to get into a conflict than in a small municipality. It might be a small municipality, but they can get involved in some pretty expensive developments.

**Mr David Winninger (London South):** Mr Hayes actually covered part of the point I wanted to bring out on conflict of interest. For example, we as members of the Legislature have to comply with the conflict-of-interest act. We file with the conflict commissioner a lot of fairly detailed information regarding our principal residence, our mortgages, our RRSPs, our corporate interests, if we have them, bank accounts, but what actually gets published is just the fact that we have a principal residence, we have a mortgage, we have RRSPs, none of the details. So in a sense, a lot of that privacy that you're concerned about is actually protected; of course, subject to freedom of information and protection of privacy.

So I can't really see it as a serious deterrent to capable people running for municipal office. I think it's important that the point come out that all of your detailed personal affairs are not going to be an open book under this legislation, just that people who do have conflicts will be made aware when their judgement may place them in a very difficult and delicate situation that might warrant them either withdrawing from the debate or declaring their conflict of interest.

**Mr Hundey:** I understood that there would be unencumbered access to this information at the municipal level.

**Ms Christel Haeck (St Catharines-Brock):** Just that

you have a mortgage, not that you have two mortgages worth a certain amount.

**Mr Ron Eddy (Brant-Haldimand):** But that means easily checking the actual—you've got a mortgage—

**The Chair:** I'm sorry. Let's not get into that.

**Mr Winninger:** Maybe we could hear from the ministry, if there's time.

**The Chair:** Absolutely. I think we should.

**Mr McLean:** Let's have clarification on that.

**The Chair:** Do you have further clarification on the point we just raised? Please identify yourself.

**Mr Peter-John Sidebottom:** I'm Peter-John Sidebottom. The process to be followed for municipal members affected by Bill 163 would be a much simpler process because you wouldn't have to disclose, as a member of the Legislature does, all of the details, including dollar values, of all manner of things. The form that we sent out to all clerks in late May and early June described a very limited number of matters, and it is simply the existence of the asset, liability or source of income and not the value that must be recorded. That information is available to the public.

In a similar manner, members of the Legislature disclose to the commissioner. The commissioner then removes a large number of items, including the values, and the remaining information, such as property holdings, mortgages and so on, are then filed with the Clerk of the Legislature and are also available. So in both cases you have access to disclosure forms by any person.

**The Chair:** Sorry. Part of the problem is we're quickly running out of time. If there's further clarification, you can talk through that with the ministry staff person here. I'd like to move on and get the official opposition some questions.

**Mr Eddy:** Thank you for a very, very important brief. I'm somewhat irked, because we're dealing with three distinct and separate and very important municipal matters rolled into one bill, and there just isn't time to examine. Each one of them should have hearings, in my opinion. However, we'll move on.

Your brief is so important because it shows and reinforces the difference between rural Ontario and urban Ontario, and when I talk about urban, I'm talking about Metropolitan Toronto and Hamilton-Wentworth versus Haldimand-Norfolk and Huron county, where you're from. There are so many tremendous differences that aren't being taken into consideration and need to be. You mentioned about how the government governs, that we have statutes and of course innumerable amendments, regulations, policies, guidelines, and of course in the recent case of London-Middlesex, government by government whim, which is terrible.

However, I'm really interested in your point about planning for infrastructure, and I agree that in the rural counties you should have the option: official plans locally, county official plans, both, or only one, at one or the other level. So it's very important what you said about planning for infrastructure; therefore, that municipality should have an official plan and should plan. I would expect you would agree, however, that if you have

an official plan locally, you would be subject to including the requirements of the upper tier in some regard, such as roads, transportation corridors and so many other things. Would you like to comment on that further, if I haven't taken all the time?

**Mr Hundey:** We'd agree with that. We believe that if there is a county interest, the local level has to take that into account in doing its plans.

The infrastructure that we were most concerned with had to do with the services, say, for an urban community: the underground services, the sewage treatment, the water treatment and the distribution and collection systems associated with those two kinds of systems. Those are very much local services, as opposed to the county roads that you might think of when it comes to county planning, and unless there were intermunicipal agreements between municipalities on some of those underground services, those are just individual local municipal issues which should be planned for at the local level.

In the regions, it's true, it's different. They do the planning and the financing for those major services at the upper tier, but it's not done that way in the counties. Moving that way and still insisting that local municipalities pay doesn't make sense to us.

**Mr Eddy:** I also want to note your particular point on the cost of county planning or a county planning operation where the local municipality actually does the planning. I note that and would certainly be prepared to look into that.

**Mr Hundey:** Thank you very much.

**The Chair:** Mr Spears and Mr Hundey, thank you very much for taking the time to come, and thank you for the brief.

0930

#### COUNTY OF PERTH

**The Chair:** We invite the County of Perth, Warden Bob Mathers and Mr Mark Swallow. Welcome to this committee. Please begin any time you're ready.

**Mr Mark Swallow:** First of all, I would like to apologize on behalf of Mr Dave Hanly, the planning director. He unfortunately is in front of an Ontario Municipal Board hearing today and is unable to attend.

I would like to thank the committee for the opportunity to speak on both Bill 163 as well as a comprehensive set of policy statements which has been brought out by the province recently. The submissions have been endorsed by county council at its July 1994 session as well as by the county's community services committee.

Generally the county is supportive of many of the policies contained in Bill 163 and the provisions as they relate to the planning policy statements. However, there are some statements and concerns that the county wishes to express to this committee.

First of all, I would like to talk about Bill 163. The county is pleased to see that the provincial interests as set out in section 5 of the bill now include the protection of the agricultural resources in the province. Perth county is primarily an agricultural community. Most of the rural and urban settings within the county are based on agricul-

tural economic activity and we are very pleased to find that it's now a provincial interest.

The county is also supportive of the land use planning at the county level and for this reason is supportive of the county plan initiative. Currently, Perth county is in the process of preparing a draft official plan for county council to review. This county-wide plan will hopefully be initiated over the next term of council expected in the new year.

One of the questions we have for the committee is that subsection 17(7) of the bill indicates that the official plan is mandatory for a prescribed county, yet the county of Perth does not know what a prescribed county is and would appreciate further clarification on this point.

The county of Perth is also pleased to see that the province is attempting to reintroduce joint planning into the planning process in Ontario. Prior to 1983, Perth county, which consists of 14 rural and urban municipalities, was planned under six official plans. Four of these plans were joint official plans and two were local plans. When the new Planning Act was introduced in 1983, the six official plans had to be broken up into 14 different individual plans. From the county point of view, this was viewed as a step backwards and was initiated in the last few days of 1985 at the requirement of the legislation.

Perth strongly supports the idea of reintroducing joint plans. However, there are some concerns that we do have with respect to the mechanisms or the specifics as set out in the act. Some of these are identified as including the fragmentation of the county into municipal planning areas. This may have the effect of totally undermining the county-wide planning philosophy which Perth has undertaken. Currently, although Perth does not have a county-wide official plan, it does provide planning services for all the local municipalities which are within the county framework.

We are also concerned that there is a distinction between regions and counties by not permitting municipal planning areas in regional municipalities. Should joint planning be reintroduced into the planning process in Ontario, the county strongly suggests that it must occur within the framework of county-wide planning as recommended by the Sewell commission and consistent with the requirements of the county plans in subsection 17(7) of the act.

In conjunction with this, the county is also concerned that subsection 14.3(5) indicates that a county levy for county land use planning purposes cannot be charged to local municipalities within a municipal planning area and allows local municipalities in a municipal planning area to opt out of county land use planning services. The county is opposed to this provision as it will result in a loss of consistency and the fragmentation of planning philosophies across broader areas having similar concerns. We also feel it will have a negative impact on the county's ability to provide cost-effective and efficient planning services over the long run. The county suggests that the province review and re-examine this issue with a view to permitting joint planning to operate within a county plan structure and within a county land use planning service structure.



Bill 163 does not appear to provide for delegation of local plan approvals and subdivision approvals to the county level. The county suggests that this is not acceptable and that the proposed legislation should be changed to make provisions for such delegation subject to acceptable criteria.

We also have some minor concerns with respect to the time frame suggested in the bill. Mr Sewell has suggested that he would like to streamline the planning process in Ontario, and the county has some concerns with respect to some of the increase in notice periods for severance applications from the current 14 days to 30 days, as well as an additional 30-day delay period between public meetings for official plan amendments and the adoption of that official plan amendment. The county would suggest that the 14-day notice for land severances should be retained and, further, that the 30-day delay period between the public meeting for an official plan amendment not be required in the case of simple or straightforward or technical amendments. Some kind of criteria could be established to determine what is simple and straightforward based on the local level and local need.

I'd also like to talk about the policy statements. Generally the county is supportive of most of the policy statements, but I would like to turn to policy statement B, the economic, community development and infrastructure policies. The county is concerned with the definition of "on-site systems" for private services and the "five lot rule," which will have the effect of shutting down most of the hamlet/village development in Perth county. Because of the relative size of the county, most of the subdivision proposals are in the range of 10 to 20 lots. Such lots are feasible economically to be developed by plan of subdivision but are not feasible to be developed on any other type of sanitary system except for private on-site services.

We're also disappointed that development on partial services will not be permitted under the goals of the guidelines. There are several examples in Perth county which have private water supply systems and which are communal in nature or owned by the municipality, and private individual on-site sanitary services which have worked well within the county system. The county is suggesting that the option for partial services should continue to be allowed.

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Item 8(c) permits the continued expansion of settlement areas under class 1, 2 and 3 agricultural lands. While this provision is consistent with the Sewell commission's recommendations, the county has expressed its opposition to this provision to the Sewell commission in the past and continues to be opposed to same. In the simplest terms, the provision does nothing to protect the class 1, 2 and 3 agricultural lands surrounding urban areas; it merely delays the inevitable development of same. The county suggests that the province should be re-examining this issue and taking a stronger stand in respect to the preservation and protection of such agricultural lands.

The county also is requesting clarification if item 10(a) is intended to permit residential development on isolated

pockets of poor farm land in areas consisting primarily of prime agricultural land.

Statement D, item 1, of the policy statement permits the extension of settlements into prime agricultural areas in a manner similar to that referred to above, section 2(c) of our brief. While the county is not supportive of the province's attempt to shut down development in hamlet/village areas, it does have concerns regarding continued, unchecked development of hamlets and villages on to prime agricultural land. The county suggests that the province re-examine this issue with a view to establishing a middle ground position between the two extremes, somewhere between the no growth scenario versus the unchecked growth scenario.

Item 3 of the policy statement appears to be flawed in that it makes no allowance for the severance of land for a bona fide agriculturally related business. This is a minor point, but it's extremely important in the Perth county context. With the words "existing agricultural businesses," it implies that a new agricultural business must establish on a larger parcel of land and then be willing to take some risk in trying to sever that existing business from that 100-acre parcel. The county suggests that item 3 be revised in order to permit the severance of lands for bona fide agriculturally related businesses.

Item 3 also makes provision for the creation of farm retirement lots. The county feels strongly that farm retirement lots should not be permitted, as they fragment farm properties, result in the creation of non-farm residential lots and unduly restrict neighbouring farm land by limiting options for agricultural use. The creation of farm retirement lots in the county of Perth has been virtually eliminated since 1968 through appropriate official plan policy restrictions. The county is requesting that the provisions allowing for farm retirement lots be removed from the policy or, alternately, that

the policy state that local councils have the right to enact provisions restricting the creation of farm retirement lots.

Item 5 of the policy statement requires that new development comply with the minimum distance separation formula of the Agricultural Code of Practice. The county has concerns over this provision due to the fact that the revised Agricultural Code of Practice does result in greater separation distances from some agricultural activities. These increased distances will result in situations where legal conforming livestock operations become non-conforming operations and as such will now be subject to new constraints and/or restrictions. The county has previously expressed its concerns to the Ministry of Agriculture, Food and Rural Affairs in response to the county's review of the Agricultural Code of Practice.

With respect to policy statement G, the county supports the statement that "Nothing in these policies is intended to prevent planning authorities from going beyond the minimum standards established in any of these policies, unless doing so would conflict with any other policy statement." As noted above, the creation of farm lots is not welcome in Perth county. We suggest that this statement in its present form may result in the provincial policy statements being waved in front of the county of

Perth, advising that the provincial policy is that farm retirement lots are permitted. The county would suggest this statement would be improved and strengthened considerably by indicating that the minimum standards should not be used against local municipalities in any planning matter appeal situation where that municipality has chosen to implement more restrictive standards.

In summary, the county would like to thank the province for the opportunity to comment on Bill 163 and the related planning statements. The county has taken an active role in commenting on provincial initiatives in the past and we continue to hope to do so in the future. The county respectfully requests that any notice of any follow-up changes to Bill 163 and related policy statements that may be forthcoming be brought to our attention for our further review.

**Ms Haeck:** I want to thank the county of Perth for coming forward. I want to take this opportunity actually to compliment you on some of the stands that your county has taken over some time, as you mention on page 4, relating to farm lot severances, the retirement lots, because that's definitely still a very contentious issue in my own area of Niagara, and definitely the farm community is divided on that issue. It's nice to see that for some length of time your county has been able to move ahead and I think develop a good strategy for farming in that regard.

It should be pointed out that what you mention in (c) of your brief you can do, and anything else, what you mention on page 2 as well—excuse me, not page 2, page 3, in (c), the fact that you can take the steps. The municipality, the county can take the steps required to limit the development on agricultural land. It's a matter that there is that flexibility there for you with regard to those points.

Some of my other colleagues may want to ask some questions or make some comments, but I did want to point out that in a meeting with the Ontario Clean Water Agency myself, I raised some issues about alternatives relating to sewer and water, and definitely the Ministry of Environment and Energy is funding at least a pilot project in my own area which is a constructed wetland dealing with sewage treatment, and definitely within the next few years there will be a range of alternatives available to communities across the province that will save you, as a county, money, as well as the taxpayer, and provide green solutions. So I think we just have to at this point realize that there are going to be a range of possibilities.

I'll turn it over to my colleagues.

**Mr Wiseman:** I'm interested in perhaps your expanding on where you say, "The county suggests that the province should be re-examining this issue and taking a stronger stand in respect to the preservation and protection of such agricultural lands." Perhaps you could clarify that. I would think the only stronger stand we could say is that you won't build on it, period, put a dot at the end and say that's it. How do we—

**Mr Swallow:** I think one of the solutions would be for the province to recognize that in some settlement areas which are in prime agricultural lands, there are constraints on that settlement area. I would think that an

option would be that the province must recognize that because of the agricultural land use around the area, other constraints such as receiving streams, for example, the opportunity for further growth is not a right; it's something that needs to be directed into some areas which are best suited for growth.

**Mr Wiseman:** I sure wish that philosophy was present in Durham region, because just about the whole area is prime agricultural land, and the local councils and the regional council have this philosophy of growth at all costs. So I applaud that comment. I wish it was more prevalent throughout the province, especially in my area where it's a high-growth area, all of it on prime agricultural land.

**Mr Grandmaître:** One question, Mr Chair, and then Mr Eddy will follow up. Maybe my question should be addressed to the parliamentary assistant. It's concerning subsection 17(7). As pointed out in Perth's brief, Bill 163 indicates that an official plan is mandatory for a prescribed county. The legislation contains no specifics as to which counties in the province are prescribed. Mr Parliamentary Assistant, can you give me the criteria needed to become a prescribed county?

**Mr Hayes:** Mr Grandmaître, one of the things that we have to do and we have committed ourselves to do is to consult with all of the counties before it's done. Then of course this would be also a task for the implementation task force. We're not just going to come and arbitrarily do it; we're going to be discussing this with the counties.

**Mr Grandmaître:** This will be done by December.

**Mr Hayes:** Yes, we plan on doing that.

**Mr Eddy:** Thank you for your presentation. Just following up on what the parliamentary assistant has said and your point made on page 2, item (d), pointing out the differences between regions and counties, it's discrimination, there's no doubt about it, but I'm very pleased to hear the approach that the ministry has taken. I think what we need to do is have some set rules pertaining to the delegation of authority, that delegation of authority will happen under certain stated rules so that those municipalities that want to have that can then, if they meet the rules, go. So I'm pleased to hear about that.

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I'm also pleased to see that your brief points out the big difference between rural Ontario and urban Ontario. There are tremendous differences.

I'm a bit confused about the joint planning situation, because although you seem to be coming out strongly in favour of it, you certainly have some cautions. Is it your fear that certain municipalities will be lopped off, so to speak, from county planning and go with other areas? I know you have two separated municipalities. Perth county is a medium-sized county, with the separated city of Stratford and the separated town of St Marys. Do you see joint planning facilitating planning between the separateds and the county? Is that what you favour, and the caution is having some of the rurals leave the county for planning purposes to go someplace else?

I did have one point I just want to stick in, because I've run out of time, and that's enacting provisions



restricting the provision of farm retirement lots. I also compliment you on doing that. There's going to be more realization because after several generations, and you get several retirement lots off a farm—it shows the folly of it, I have to say, in time, considering that retirement lots are a maximum of five years in the name of the retiree and then they're gone to something else.

But it's the joint planning thing that I'd like you to comment on further, if you will.

**Mr Swallow:** Previously, the county had joint planning. It works.

**Mr Eddy:** With the city and the town?

**Mr Swallow:** With planning areas about the local municipalities—

**Mr Eddy:** Within the county.

**Mr Swallow:** —within the county. The city of Stratford is completely separated from the county—

**Mr Eddy:** And should it stay that way, do you think?

**Mr Swallow:** —and there are efforts right now with a joint planning committee of the city and the four surrounding townships, through an informal Stratford and area planning advisory committee, which does make recommendations on planning issues.

The town of St Marys, although separated, does buy the planning functions from the county—

**Mr Eddy:** Oh, good.

**Mr Swallow:** —so we do have the ability to coordinate some of the local interests from the town with the county interests. Of course, there's always a political line to follow on that.

The concern that the county has with joint planning is not the fact that local municipalities will be encouraged to plan jointly; it's the mechanisms and the costs involved with how we are going to implement that. If we have four or five townships which get together and decide that they are going to be a planning area, how does the county manage to retain its county function if that group of municipalities decides not to employ the services of the county planning service? That's where our concern is, this fragmentation that may result if the four or five or six local planning boards then decide some will use the planning services of the county, some will use private consultants or some will hire their own planners.

**Mr Eddy:** At the present time the county does provide the planning service for all of the constituent municipalities.

**Mr Swallow:** That's correct, and generally speaking, the joint planning functions in the county are still in existence. They have their own separate official plans, but with the exception of perhaps the township name, they're almost identical and they still have informal joint planning committees.

**Mr Eddy:** I see. Thank you.

**Mr McLean:** I welcome you this morning and thank you for your brief. There's one area that concerns me too. I have a lot of hamlets and villages in my riding, Simcoe East, which is north of Orillia, or Orillia and area. You're asking that there be some middle ground between the two extremes. We have villages that have sewage systems, we

have villages that don't and we have hamlets where most don't have sewage systems. What recommendations would you make with regard to some middle ground on that?

**Mr Swallow:** I think in the Perth county context there has been some realization that many of the municipalities that don't have services are in a very difficult situation where they need to expand because they are the retirement communities of the farm area. The local farmers are retiring to these spots. They have always lived in the area and these hamlets serve no other function than retirement lots. They're not bedroom communities for London or Stratford. There's just not that much pressure for that type of activity.

The middle ground would be for the local municipalities to recognize the constraints of some of these hamlets. They recognize that there's limited development in some areas. Many of the subdivisions which are proposed are 10 to 20 lots and they are that size because of costs involved with the installation of services such as roads and storm sewers and perhaps a water supply. They're not developed and built upon overnight. These 10 to 20 lots may exist for five, 10 or 20 years.

**Mr McLean:** Do you think a secondary plan would help resolve some of that situation, spelled out in the plan?

**Mr Swallow:** In the county context, the idea of a secondary plan would probably not be needed. The size of the hamlets is not that large. Many of them are 40 or 50 people in size.

**Mr McLean:** Do you think you could do it in the county official plan? Does your county have an official plan?

**Mr Swallow:** The county does not have an official plan, but all of the local municipalities have official plans.

**Mr McLean:** My colleague wants a clarification from the parliamentary assistant.

**Mrs Cunningham:** Mr Chairman, I hope this is related, but I was just noticing that Mr Hanly's off doing something else today. You're director of planning?

**Mr Swallow:** Yes.

**Mrs Cunningham:** I have a question with regard to the planners. It's been brought to my attention with regard to the Advisory Task Force on Implementing Planning Reform that the planners, the Ontario Professional Planners Institute, are not represented on this. That's my understanding. If somebody could even make a note, I'd like a response.

They're tremendously involved, as we all know, in the work that all of us are concerned about and they're pretty good at bringing a lot of different ideas together. They did make a request that they be on the task force, and I'm just wondering if the parliamentary assistant knows if there's been any movement in that area.

**Mr Hayes:** My understanding is that, yes, they are on the technical parts of the task force. So they are included and will have input, yes.

**Mrs Cunningham:** Okay. Representation along with

the other three groups then?

**Mr Hayes:** You want to just make sure you get it right?

**Mrs Cunningham:** Yes, I want to make sure it's right because I have to answer this today.

**Mr Hayes:** That's right. And I don't want to give wrong answers.

**Mr McKinstry:** We heard a lot about the fact that there are a number of groups who are not represented on the task force, and we also felt that it would be very helpful to have a lot of professional expertise and advice for the government. So as an adjunct to the task force the technical committee was set up, and the technical committee contains membership from people like the Ontario professional planners association, the architects' association, lawyers, municipalities.

We also set up a rural table to make sure that there would be advice being given to the government from the rural sector. This was our way of making sure that we got all the input while still allowing the groups to be small enough to function effectively, because they have a lot of work to do. We are depending on them for lots and lots of work.

**Mrs Cunningham:** Okay. Now, they'll probably be pleased with the information, which they probably already have, but their request was that they wanted representation on the advisory task force on implementation comparable to that given to AMO, the development industry and environmental interest groups. The response that you've given is that they are a subgroup of that but not on the task force itself.

**Mr McKinstry:** They're not exactly a subgroup, they're a parallel group. So they don't report through the task force. The task force gives the government advice; the technical committee also gives the government advice. But we felt that the technical committee, being made up of mainly professional folks, would be helpful. They could discuss things on a more detailed level than the task force might. OPPI is a very valuable institution for us.

**Mrs Cunningham:** Yes. I thank you for the clarification.

**The Chair:** Mr Swallow and Mr Mathers, we thank you for your participation in these hearings.

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SANDY LEVIN

**The Chair:** We call upon Sandy Levin. Welcome, Mr Levin. Please begin when you are ready.

**Mr Sandy Levin:** Thank you for the opportunity to present. I'm no stranger to this bill and to planning in the area, having made a number of presentations on annexation, and I recognize members of the government and the opposition parties. I also appeared before the Sewell commission twice. I'm keenly interested in the outcome because, one way or another, I'm going to have to live with this bill.

I'm past chair of the Urban League of London, which is an umbrella group for neighbourhood associations which often find themselves at city hall discussing plan-

ning issues. I'm also one of two provincial appointees to the board of the Upper Thames River Conservation Authority, and this bill will certainly affect section 28 approvals under the Conservation Authorities Act. Finally, I'm also a candidate for city council in London, and therefore I'm going to have to live with this for a long time to come.

Let me start by commenting on the provincial policy statements.

In part A, goal 1.4, it troubles me to see the phrase, "Every reasonable opportunity should be taken to maintain the quality of air, land, water," and so forth. When the province is talking about natural heritage and environmental protection, there are two problems here: One, the policy says every reasonable opportunity "should" be taken, rather than "shall" and, two, who defines "reasonable"? Without a clear, upfront definition, it will be up to case law and various cases going before the OMB to define the meaning. By that time, who knows what we're going to lose?

I'm also curious to know how part A, goal 2, stands against the Drainage Act. The Drainage Act may be the pre-eminent piece of legislation in this area and sometimes a wetland stands little chance in its wake. So can somebody sort out how that's going to work if this bill becomes law?

Also in part A, I'm interested in knowing how the government sees goal 2.2 working out. How will the policy encourage municipalities to protect wetlands that are not provincially significant? Where's the incentive? Without an incentive, London in particular is going to lose many wetlands that are not classes 1 to 3. I say this because there's no positive incentive, nor a negative disincentive, for the municipality or the developer to protect the lands. Is there some direction this legislation can offer?

As far as part A, goal 2.4, dealing with environmental impact studies, the bill doesn't set out procedures for an EIS. The established procedures should be driven by policy or by legislation and not by the proponents. Are there some means to set up a mechanism by which the proponent, the municipality and citizens can meet to define the terms of reference for the EIS? It has talked about a lot more group participation in other areas and minimizing appeals to the OMB. Why not here as well?

It would also be useful to require that an EIS have a public review stage before approval. Concerns brought forward by the public would then be part of the documentation, as is the case with the environmental assessment process.

I am, however, pleased to see there's a monitoring plan that will be included in the preparation of the EIS.

Moving on to part B of the policy statements, it seems to me that the province's transit supportive land use planning guidelines do not seem to be included anywhere. The closest reference to transit supportive land use planning is part B, sections 5 and 6 of the policy statements. They sound good, but there's no monitoring and no clear idea as to who gets to define what "efficient use of land" means. I'm puzzled why such a well-researched



guideline wasn't integrated into policy.

I'm also puzzled by B.7. How do cities plan servicing facilities that maintain or enhance the quality of the natural environment? London's going through that process right now and I'm not sure that if a pipe that moves sewage most efficiently is down a river or creek valley, by gravity rather than by pump, that maintains or enhances the quality of the natural environment. I'm not sure how we're going to define those things. If it's more expensive to put the pipe in another way that does enhance the environment, which policy takes priority, A or B? Without clear priorities within the policy statements, there's no direction to the municipalities. That's the important part of the policy statements: to give the direction to the municipalities.

It's of some concern that the section on interpretation and implementation states that these policy statements do not take priority over other policy statements. I interpret that to mean that, even internally, no policy has priority over the other. You've got to address that at some point, because how else do you resolve conflicts between, say, policy A and policy F, which can be mutually exclusive? How do you resolve it?

I'm also looking forward to seeing how B.10(a)(iv) will look. This section deals with development within rural areas within a municipality. It sure sounds a lot like London. However, who's going to assess the long-term, public costs of infrastructure, public services and public facilities, and then who decides what's acceptable? Whose numbers do we use? If a goal is not measurable, it's not much of a goal. I note there are lots of definitions in the policy statements; there's room for more.

Policy B.13 deals with significant landscapes and vistas. It's sort of a "nice, but" section, because the wording currently says "decisions about development and infrastructure should conserve" rather than "shall."

Conservation policies in E also need to be tightened up here because many paragraphs start with "municipalities should be planned." My question is, if municipalities aren't planned in the manner set out by policy, what happens? Where are the means of enforcement? Because some of these measurements are subjective.

Maybe one way to deal with that is through a commissioner responsible for receiving information from the public when the intentions are seen to be inconsistent. Maybe the Environmental Bill of Rights commissioner could fulfil that function, rather than setting up another bureaucracy, if you will.

Now, before I leave the policies and move on to the changes to the act, I want to suggest one new thing. I think it's a really good time to include enabling legislation, startup funding and technical assistance for the purchasing of land through community land trusts. Alternatively, make it easy to put a referendum on a ballot so that citizens could vote to float debenture issues to pay for conservation easements.

This has worked successfully in the Philadelphia area. We pay for services as a community; why not for land? They've saved farm land and natural areas in several places in North America, including California and

Pennsylvania, Lancaster county in particular. It provides the financial compensation, that financial incentive to save the land.

Amendments to the act: Clause 16(a) refers to the content of an OP and it suggests that OPs "shall contain goals, objectives...to manage and direct physical change and the effects on the social, economic and natural environment." However, clause (b) says that an OP "may contain a description of the measures and procedures...." Therefore without (b), (a) is somewhat irrelevant.

Section 16 also amends the act such that the OP content requirements will be contained in yet-to-be-written regulation. Too bad, because the Sewell commission's final report contains sound ideas in recommendations 32, 35 and 45. I wonder if everybody's waiting for London's Vision 96 process to guide the regulation writers. Let me know, because I'm the chair of the economic development advisory committee and I've got some input into that too.

Section 21 of the act should contain a provision that municipalities undertake a general OP review every five years. I would like to recommend that the section include a provision that municipalities may defer an application for a major plan amendment until a general plan review is completed so that we look at things in a comprehensive manner, which is the goal of the Planning Act.

#### 1010

Could you also please clarify section 22. I'm concerned that if I'm reading this one way, it may deny the right to a public meeting. If so, coupled with the denial of appeal rights in sections 29, 38 and 41, we may have some problems here. The denial of appeal rights never came up in any of the hearings in the Sewell commission, so it seems to suggest that if you miss the public meeting you may lose your right to appeal.

I'm wondering how that might apply to conservation authorities. For example, London sends a liaison to the Upper Thames here. The Upper Thames responds but isn't always at the public meeting. If they miss the public meeting, do they lose the appeal right? I'm not so sure.

I'm also concerned about the impact for the public more so than for the conservation authorities and the people who know there's a process. Unfortunately, most people don't know the rules of the game because they don't know the planning process has rules. For example, I've sat at many a planning committee meeting when a neighbourhood resident has said, "If I'd only known before." Public notification to only those residents within 120 metres and one notice in a paper come across as being somewhat secretive.

Although a 90-day appeal period is good for some, I'd only accept that change if the act was amended to require more public notice. I've felt for a long time that posting onsite of a notice of application to amend the OP or the zoning bylaw, which you see in a lot of municipalities in this province, should be mandatory because better information means better decision-making, fewer appeals, fewer conflicts. But if the government feels that the present process is sound, then maybe the act should require the chair of the planning committee or the

planning board to have appeal procedures posted prominently or announced to the public attending the public meeting.

I'm also concerned that appeals to the OMB could be denied if the request is not a valid land use planning ground. It's not defined. Because there are widely differing views on what's good planning, I'd suggest deleting the phrase, because "frivolous or vexatious" has captured the meaning and intention well enough up to now.

I'd be less concerned, however, if the province were to carry out the recommendation in the Sewell commission to provide intervenor funding. It's essential because cases are still going to go to the OMB and the cost of hiring competent counsel is excessive. For example, here in London a developer had plans to build an intensive concrete development just outside the 120 metres adjacent to lands of the class 2 wetland, 10 minutes from where we're sitting. To fight this, local ratepayers retained counsel and the bill's over \$30,000. Without intervenor funding, how's the public interest going to be heard? Most proponents have more funding than concerned citizens. Even AMO and the Ontario Home Builders' Association supported this idea. I would suggest one way to raise the money, knowing full well about financial difficulties, is levies on the development application. Such levies will only be paid if the proponents don't engage in a meaningful public consultation early in the planning process, as I recommended a little earlier.

Moving on to section 70.2: I'm a little in the dark on this one because all the details are going to come out in the regs. It deals with the development permit system. I'm concerned about the public input going into that. Please continue to consult the public in that process while you're doing that because the regs may have some significant impact on the rest of the legislation.

I'd also like to recommend an amendment to part IV of the act which would prohibit pre-approval site alteration or site alterations in contravention of terms and conditions of approval. It's also essential that municipalities be required to establish a permit system to regulate tree cutting, vegetation removal, changes in grade, placement and removal of fill.

Within this proposed system you must give private citizens the right to apply to the courts for injunctive relief in cases of unauthorized site alterations. I'm concerned because it doesn't appear that a new Trees Act is going to be passed during the mandate of this government, and without the legislative authority, separated cities like London are relatively helpless to stop the clearing. We've had cases in this city over the last little while. If the committee feels amending section 7 is inappropriate, section 223.1 of the Municipal Act could also suffice here.

In winding down, I'd like to make one comment on the Municipal Act and the conflict-of-interest guidelines. I note the change in the Municipal Act in section 55 to make votes on in camera items open to the public, but I'm not so sure how the public's going to know when the votes are going to be taken, because we're excluded during in camera discussions. So if a vote's recorded and

the context isn't there, how do I know what's happened?

The conflict-of-interest guidelines: I'm not too worried about them as a candidate. I think we all gain when municipal politicians file some financial information for the public record. I'm not so sure if you ever have any idea if everything's in there.

In conclusion, nearly a year ago a meeting of the land use caucus of the Ontario Environment Network had publicly asked the minister if we'd see amendments to the Planning Act during this mandate of the government. To his credit, he gave a direct one-word answer: yes. And we got them. I congratulate him and the government for bringing the changes forward and allowing continued public input.

Although I have mentioned areas for improvement in the bill, many parts of this bill are sound. There are still some gaps. It doesn't incorporate many important proposals of Sewell developed after extensive and wide public participation and consensus and it also leaves many of us wondering what the unwritten regulations will contain. As no piece of legislation is perfect, especially in a province as diverse as Ontario, I look forward to this committee's bringing forward substantive improvements to the bill. Thank you.

**The Chair:** Thank you, Mr Levin. I know that many members would have liked to ask you questions and that you would have liked to get answers to many of your questions. We just don't have the time.

**Mr Levin:** I understand.

**The Chair:** But we found your brief very, very interesting and we thank you for coming.

SUSAN SMITH

**The Chair:** We invite Susan Smith. Welcome.

**Ms Susan Smith:** Thank you very much. Sandy Levin's a very tough act to follow at any time. I'm sorry you didn't have an opportunity to ask him questions.

My presentation will be a little bit different. My button says "Elect Aunt Susie to Board of Control." I'm a registered candidate for municipal council in London. I wasn't able to pull my presentation off the computer, so please try to ignore the shuffling of paper and the lack of eye contact as I find my points in my sheaf of papers.

My first comment: Please pass this bill. The over four years of looking at disclosures of interest and conflicts of interest and the archaic legislation we've had have been a pretty good four years of thorough review. In addition, the almost three years of input to the processes, including the Sewell commission, I think speak well to getting on with the job with a majority government mandate term of office.

Planning's a difficult area of public policy. There are really strongly competing interests in the area of land use: municipalities; the provincial interests; builders; land developers; community developers; ratepayers; private property owners of small properties; residential dwelling and private property owners of large, vast amounts of property with varieties of zoning on them; also environmentalists. Then we have those who believe land use stewardship for intergenerational equity and interspecies equity is the most exigent planning exercise to which



human beings could ever be called as an academic exercise.

I'll start with the section on conflict of interest and open local government. I think that's a really important area to pass. I've looked at the draft, if you have it in your packages, of the disclosure form and I have a few comments on it. My personal view is that it is not open enough. Under income sources I would like you to consider adding income sources including inheritance, lottery winnings, mutual funds and pensions, some of which are taxable, some of which are not. I say this in the context of forms 292 and 266 under the Income Tax Act, which treat a part of earned income from a political job, an elected position, with some form of tax-free status.

I think the wisdom for that has passed. I appreciate it's not in your jurisdiction; it is strictly federal law, but I believe that time has passed. I believe it can't be defended on the basis of merit, and the context in which I make the comments about a very demanding disclosure of financial information is that the positions you yourselves fill are most often filled by people who come out of municipal councils in Ontario. So, that is in the context of one who is running for office.

1020

I'll go briefly to some of the issues of policies. I won't be the first person or the last person to tell you that there appears to be some fine-tuning that you will have to look at. I'll give you a theoretical example. We have pre-existing policies that aren't going to be revisited. In the biggest context of the framework that I've talked about, in terms of intergenerational land use planning for sustainability, part of a water supply would be the first issue I would ask you to consider.

Within that context and in the micro of living in southwestern Ontario, some day, perhaps not in my lifetime, as people live here and not in other parts of the globe, the supply of potable water is going to be a serious consideration to maintain, not only not wanting to have desiccated wilds, not wanting to have groundwater sources and extensive moraines contaminated with highly stable toxic chemicals that certainly will not be organically broken down. The supply of potable water is a very strategic thing to plan for. If I were to consider myself, in 1994, in southwestern Ontario to be an urban survivalist planning to make sure we have a source of potable water, it's very species-centric to want to think that human beings will continue to be in this little corner of the globe. But I think it's a consideration that is not too far removed from the exercise that you practise.

Therefore, looking at connected greenway, flyway space for birds of upland hardwood, is also significant for retaining upland hardwood that is found on top of mineral aggregate. Now, we're in 1994. I believe we have the technology. Certainly there's the collective brainpower to do things like find recycled materials to build roads. There is a possibility to actually sterilize aggregate, and I think that the application of policies can consider looking at that. This might be the next generation of consideration after you pass this bill, but it is not immune, to be visited as an intellectual exercise in considering why you would want to take that into consideration.

Similarly, the Drainage Act: A cynic who doesn't own private property might say it's pre-servicing. I think that in my lifetime, from what I've seen of industrial activity and agricultural activity, I consider agricultural activity to be a subset of industrial activity. Therefore, the exercise of requiring official plans, remarking current land use and its economic value and balancing that against the ecosystem imperative I tried to explain earlier, is the framework in which you look at this.

The biggest challenge is creating the supportive databases, both the ecosystem, biological databases, and human activity databases. For that I would suggest including landfills, railway lands, military sites, certainly military sites next to railway lands with respect to certain types of hazardous materials that you would want to take into account when doing any kind of land use planning, including considering sterilizing the land for a period of time for specific uses. I think again that gets to the intergenerational issue of how far ahead you really have to be prepared to look at issues.

There are wonderful things in this bill: planning boards for unorganized areas, and the best example I can cite is out of—not an AMO document. North Bay just got a landfill site. They went through all the processes, and where they finally got the landfill site was of course in an unorganized territory.

I think there is a lot of equity built into this bill: respecting areas of land where there's a very sparse population on it as well as areas that are already organized and have a great deal of human activity giving input to public policymaking for land use.

I'd like to be specific about a few finer points. I don't believe minor variances should be appealable to the OMB. I believe that private property ownership doesn't necessarily have to be an ethic subsidized by all kinds of people in this province who have all kinds of equity and are stakeholders and don't own private property at this time. I believe that's one of the ways of building equity into that.

I want to get back to the issue of unorganized areas and where planning can be certainly devolved to other approval authorities. I think the basis of that is the opportunity to have a good database of geographic information. I think that's really essential and that is where the focus should be. I am personally a proponent of devolving more responsibility to the local authority. One example is that I believe the commissioner, under open local government, should be paid not by the Ministry of Municipal Affairs but on our local tax base. I think that is one of the easiest places to ask the electorate to spend money, to have their money spent in that area. I think it's quite appropriate that the local municipality pay for that role. It's a very essential role.

Similarly, I think with a lot of geographic information systems, given that it's 1994 and we have the technology—even though I can't pull my report off a printer—the opportunity to share information and having something like registries is really appropriate, really useful and verifiable. This is the information age. It is not the property ownership age.

An analysis that I will give you of how intergenerational

ationally I look at this issue is to look at another part of the globe in another era, before I was born, when geographic information was used to make a political decision in South Africa about all kinds of things. I don't think there's anybody in this room who didn't have a very clear recognition, through the majority of their lives, how inappropriate certain aspects of power and control over land were, and systems that were not democratic were not very appropriate human activities. As one who has not a great deal of respect for the common law of private property ownership, I think the era that I live in requires all of us to look at other considerations.

I don't want to be piggy with the time, so if anybody has questions, I've just highlighted probably the most contentious of some of my positions but I'd be happy to answer questions.

**The Chair:** We thank you. If we entered into questions, it would be a problem because there are only approximately two minutes left. So I'd rather—

**Mr McLean:** Half a minute each. All I want is 30 seconds.

**The Chair:** I'm not sure about 30 seconds, unless you want to make a point as opposed to raising a question.

**Mr McLean:** At this point the commissioner, you say, should be paid by the local municipalities. Are you in favour of raising taxes in London to pay for the commissioner?

**Ms Smith:** Yes, I am, and for a number of other reasons too. But yes, I am.

**The Chair:** Any other quick ones?

**Mr Eddy:** Yes. Thank you for your presentation. We can't ask questions, but there are several things that I'm very, very interested in. I do want to emphasize the difference between rural and urban planning. I think we have to do some things to meet those different circumstances.

I was afraid when you first spoke of the Planning Act—"Get on and pass it," I just wanted to say I think everyone here has agreed we need improvements to the present Planning Act. We want and need them and I expect the act to be going forward. It's some of the details, and you certainly elaborated on several.

**Ms Smith:** May I please respond? I do say get on and pass it. I've been of the understanding that when you were the administrator for Middlesex county you were not recommending an official plan for the county.

**Mr Eddy:** The county has had an official plan for many years; a county official plan. I can give you a copy of it. It's been approved by the ministry back in 1982 or 1983. Jean Monteith was the consultant.

**The Chair:** They have a plan.

1030

**Ms Smith:** No, no, you did have a plan. I'm sorry; what I meant to say was that you didn't want, or somebody didn't want, to raise taxes to hire a planner. I have tremendous respect for that profession; I feel it should be shuffled right to the top of this whole process, including on the technical committee.

**Mr Eddy:** Mr Chairman, I have to respond to this. I

have the report. I'm sorry, but the report went to county council, and I can get the date and the year. There was a vote, it lost by one vote, and it was to hire a planner, a staff planner, who would do economic development, because it's the only way we seem to get it together. I can give you a copy of the report and I fully supported it.

**The Chair:** That's quite clear, Mr Eddy. If there's anything further, you can talk to each other afterwards.

Thank you, Ms Smith, for your presentation.

#### NORFOLK FIELD NATURALISTS

**The Chair:** We invite Norfolk Field Naturalists, Ms Jackie Davis and Mr Peter Carson and Mrs Nancy Tilt. Welcome to this committee. You have half an hour for your presentation. If you want the members to ask you questions, please leave as much time as you can.

**Ms Jackie Davis:** Yes, we shall. Thank you very much. I'm sorry I have to take my glasses off and can't look at you directly.

Mr Chairman and committee members, on behalf of the Norfolk Field Naturalists I welcome this opportunity to talk with you about Bill 163. Before I go any further, I would like to introduce my colleagues Mrs Nancy Tilt, who is a biologist and chairman for the Halton ecological and environmental advisory committee, and Mr Peter Carson, a biologist and member of the Norfolk Field Naturalists, both of whom are our technical consultants and will answer questions at the end of this presentation.

Historically, the main objectives of naturalist groups have been to observe, study and appreciate the various life forms—plant and animal. The approach by both professionals and amateurs has been to isolate species and to study them individually, but this approach is no longer adequate for our greater understanding of the natural world, though it is still necessary for some kinds of information collection.

Students of nature are embracing a systems approach to the study of natural history: What are the parts of the system and how do these parts fit together? The focus of the naturalist/ecologist then becomes the ecosystems in which a species functions. That of course involves its whole environment: air, earth, water and other species, including humans.

As naturalists we look at whole ecosystems and environments, not just a particular species which may have originally attracted our interest. We have seen that an impact in one part of a system has repercussions in a distant other part. That other part may be the songbirds we treasure, the fish we want to catch, the game we want to hunt, the special plants we want to see or even ourselves. The naturalist becomes the environmentalist.

My comments are directed towards how Bill 163 has an impact on some environmental protection issues. My talk will touch on three areas of Bill 163: the statement of purpose, the public notification process and public involvement. It is easiest to start at the beginning, so I will start with section 1.1 of the Planning Act amendment, the purpose.

Whenever I must make a decision, I always go back to the basic premise, to the primary assumptions, to the reasons or purpose for the exercise at hand. I frequently



go so far as to write them out and stick them on my desk lamp so I can glance up and read them and check that I am on course, that I am not deviating from my intended purpose.

Were I to do that with the purpose as written in the Planning Act amendment, I would be hard pressed to know that one of my guiding principles is to maintain and protect the natural environment. When I read clause 1.1(a) on page 3 of the amendment, the purpose is "to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this act." I know that the phrase "sustainable economic development" has much more weight in this statement than does the phrase "in a healthy natural environment," in spite of the excellent protection policies, most of which we fully support.

Let's simply look at the intent of the sentence from the way it is meant to be read and understood. The purpose of the act is "to promote sustainable economic development." That is the main idea: to promote sustainable economic development. "In a healthy environment within the policy and by the means provided under this act" is only a modifying phrase. The healthy natural environment is less important here than sustainable economic development. Sustainable economic development does not necessarily maintain or create a natural healthy environment.

For example, a pine plantation is a sustainable economic development. Pine trees are planted, are left to grow for several years and then are harvested. If so desired, the process can then be stated all over again. It is sustainable, it is economically viable and it is a development. However, it neither creates nor maintains a healthy natural environment. Pine plantations are sterile environments. They have very limited species diversity.

"To promote sustainable economic development" is enshrined in the purpose of the act, is defensible on that ground and has the power of all Parliament behind it, whereas "a healthy natural environment" is maintained only through ministerial policies which, though very strong, can be more easily changed than the act itself, either by legal challenge or change in the government.

Throughout the hearings held by the Commission on Planning and Development Reform in Ontario, that is, the Sewell commission, strong voices were raised in support of more environmental protection. We therefore recommend that the purpose section of the Planning Act include a separate statement saying precisely that the act guarantees the maintenance of the natural environment for present and future generations.

Next I want to talk about public notification. Clause 1.1(d) of the amendment to the Planning Act says the purpose is "to provide for planning processes that are fair by making them open, accessible, timely and efficient." Our main concern here is with accessibility and timeliness.

The Sewell commission recommended, in number 76, that municipalities be required to maintain a registry for those requesting information on planning matters in the municipality. However, the amendments to the act do not include these recommendations. I would like to explain to you just how important a registry and regular notification

procedures are in rural areas, because a registry may frequently be the only way in which interested people or groups will get information on planning matters.

Most newspapers are weekly, not accessible to all and not timely. There are several township councils in our region and at least that many different newspapers to consult. On one occasion recently, a notice appeared in the local weekly paper for a public meeting on that very night to discuss a local planning issue. Though the notice had appeared just that day, over 100 people showed up. News of the meeting had travelled by word of mouth. However, not everyone interested in the issues knew about it in time and thus missed the opportunity for involvement.

An ad hoc committee consisting of many stakeholders and heavily represented by the development industry was set up to address problems in the development application process. The committee brainstormed and expressed concerns with delays caused by OMB hearings, the public input process and objections after studies were completed. Untimely public notification was partially responsible for the delays. The committee recommended that, "A registry should be considered for circulation of development applications to interest groups...."

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There is another factor that can at times have an impact on the public notification process, as well as other local municipal processes. Because of the small population base, people are frequently in positions to make decisions which have an impact on friends, neighbours and adversaries. Biases and personal relationships do sometimes influence actions taken.

Public notification requires different considerations in rural areas than in urban settings. Because of the communication barriers—weekly newspapers; distance, both physical and psychological; and smallness of community—it is essential that a public notification system be carefully set up at regional and local levels, impartial and monitored.

We therefore strongly recommend that number 76(b) of the Sewell commission recommendations be included in the Planning Act, that part being: "Municipalities be required to maintain a registry of those requesting notification of planning matters in the municipality or in parts of the municipality. A nominal fee may be charged for this service."

More accessible and timely public notification will go a long way to improve fairness and ensure public involvement in the planning process, but this is not enough. It is often individuals or small environmental groups that realize that a local or regionally significant environmental area may be at risk in a development application. These people are volunteers with a commitment to the environment but must attend to other jobs for income. Although they do not often have great amounts of time and money at their disposal, they often have considerable technical expertise and are very aware of the possible negative environmental impact by a development. They also may not have access to all the resources and information that will help improve the development application.

This is one of the reasons why I would like to talk about another statement in section 1.1 of the Planning Act amendments. The purpose is "(e) to encourage cooperation and coordination among the various interests."

Many regional environmental issues are not understood and are undervalued. They do not receive the attention they require. This can result in minimal or non-existent cooperation and coordination with the environmental community.

I cannot speak for other areas, but I can say with certainty that in ours we must recognize and include regional environmental interests in a more formalized way than we have done in the past. Poor planning and development decisions are rapidly degrading areas which only a few years ago were healthy and viable.

Less than five years ago, ruffed grouse lived in the forests on a quiet country road about seven or eight miles from the city. Hunters were able to bag their limit easily. But indiscriminate building in woodlots has totally destroyed grouse habitat in that location. Grouse are not even an interior species—that is, they will happily live at the edge of woodlands—but there is now so much human disturbance they have lost their habitat.

Last weekend I visited Hullett provincial wildlife area in Huron county, 2,200 hectares of managed and naturally occurring ecosystems, an impressive marshland costing \$1.5 million and taking 30 years to create. We easily have the equivalent and more, if we are wise enough to make sure that we keep not only provincially but regionally significant areas. What I am saying is that we already have a good supply of woods and marshes but we are rapidly losing them through constant nibbling away. It's not the one house in the woodlot, it's not the small marshy area a farmer drains, it's the cumulative effect of all these small incursions which is badly diminishing our natural areas.

Essex county now has 1% forest left. The federal government is pouring large amounts of money into this area for restoration, not because it's aesthetic and not because it's nice, but because it's absolutely essential.

Other areas look with envy at our natural resources. Though some people take it for granted, there is a committed environmental community which recognizes and values the natural heritage here. That community realizes that efforts must be made to preserve it now.

Over the past few years several attempts have been made to introduce the idea of an ecological and environmental advisory council, an EEAC. All efforts have met with a negative response and yet our investigations have shown repeatedly that EEACs can help to save the environment and long-term costs. They can and do perform a large number of functions to advise and assist a municipality in the management and conservation of a high-quality natural environment. Effective EEACs have high levels of technical expertise among the committee members, are non-partisan, are objective and volunteer, and they operate under terms of reference endorsed by their council.

EEACs can go a long way towards mitigating develop-

ment applications, anticipating objections, avoiding OMB hearings, preventing 11th-hour objections and improving the public involvement process. Overall, EEACs make development applications work better for the environment while attempting to help the developer find a solution he can live with.

The Sewell commission recommended, number 78, that "The Planning Act...permit municipalities to establish committees to advise on...the natural environment" and other matters. We would go further. We strongly recommend that the Planning Act be amended to require the establishment of ecological and environmental advisory committees in communities or municipalities where they do not already exist and that these ongoing committees advise and assist the municipality in the management and conservation of the regionally significant natural environment.

In conclusion, the Sewell commission observed that we in Ontario want to make environmental protection a priority. The Planning Act amendments and policies are meant to reflect that priority. Add to those amendments a statement in the purpose to guarantee the maintenance of the natural environment; a public notification, particularly a registry, that will work in rural areas; and placing of ecological and environmental advisory committees in municipalities without them. That will assure us that you have really heard those strong voices across Ontario.

Thank you. Mr Carson will answer questions on the regional environment in our area, which is Carolinian Canada around the area of Haldimand-Norfolk, and Mrs Tilt will answer questions on the roles of environmental advisory committees in municipalities.

**Mr Eddy:** Thank you for your presentation and your stated concern about maintaining a healthy natural environment. It's certainly very important. I endorse it.

There are many problems. You're talking about Haldimand-Norfolk specifically because you're a Norfolk federation. The region is presently, I believe, reviewing its official plan. Have you been part of that in making presentations and attempting to convince—

**Ms Davis:** Yes.

**Mr Eddy:** Can I ask the reaction, or has any action been taken regarding that? I would hope it's been.

**Ms Davis:** There have been small encouraging nods, but they've been very small and only nods. We are making a little bit of progress, I'm happy to say, but we feel there's a little bit more urgency to the situation than is being reflected in the progress that's—

**Mr Eddy:** I realize your concerns when you consider the fragile sandy soils of Norfolk. There has been some improvement in agricultural practices, thank God—minimum tillage, no tillage and environmental plans, farm plans. Some of the things are moving. But I do understand the many sensitive natural areas that you have and I would hope that you could be successful with the regional council on those.

**Ms Davis:** We're trying.

**Mr McLean:** You spent some time talking with regard to the registration re public meetings. Your view appears to be that each site or minor variance site should



be posted with a sign, like a real estate sign, at the road indicating there is going to be some rezoning take place.

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**Ms Davis:** That does happen, and the problem is the space, the area. Because our population is vastly spread out, very often people who have an awareness of regional environmental issues are not aware of when the notifications go up, because all that is done is that notification at the site. We would have to be driving around in our cars, I don't know how many hundreds of miles every week, to stay in touch and we can't do that.

**Mr McLean:** That has been expressed by many delegations coming before us with regard to the availability of public hearings, people being able to know that there is rezoning taking place. Your simple answer would be that they all should be posted.

**Ms Davis:** No, our answer is that there should be a registry.

**Mr McLean:** So you'd have to keep checking the registry every week to find out—

**Ms Davis:** No, the registry—oh, okay. By that I mean the registry would send out notifications to us. In fact, we have a spotty response from our municipal governments. Occasionally, they do circulate—just as the ministries and other commenting agencies are circulated with development plans at several levels—because of our interest in environmental concerns we are circulated, but we are not circulated regularly enough.

**Mr McLean:** Thank you for appearing before the committee and expressing your views.

**Ms Haeck:** I'll keep my comments brief. You, in fact, reflect a number of concerns expressed actually in Niagara Falls where we met yesterday, which is close to where I live, and so I think your points are right on.

The act basically suggests that one meeting be required on official plans. I know people in my area would actually like to feel they had more input. I'd like to get your response to that.

Also in dealing with my local residents, they feel that they should have as full information about an application as possible. I'm thinking of a water line issue that has come up in the Niagara-on-the-Lake area where people really and truly didn't know what the municipality had put in its application, and yet they were told something else. They probably would have had a different response if they had full information as to the economic development aspects of what would occur as a result of that water line.

How would you respond to those two concerns? Are you in favour of those two—

**Ms Davis:** My response is that's the role an environmental advisory committee serves. Very often, as I said, the individual simply does not have access to the resources and expertise. They have an intuitive sense of what the problem may be but they don't have the technical information, and that's why an EEAC may be formed. I think Nancy could answer more fully on that.

**Mrs Nancy Tilt:** With the work I've done with the Halton region EEAC, our committee is made up of about

20 members with a variety of areas of expertise in the environmental field. Development applications that come to us—these are usually ones that are in or adjacent to environmentally sensitive areas that have already been designated—when they come to us, we can draw on that field of expertise and three or four people will take a good, close look at it and provide technical advice back to planning staff who will then incorporate it in their comments and feed that back to council for their deliberations when they're considering things.

In the sort of ordinary, everyday, run-of-the-mill type of things that come up, it's a really effective way of getting that kind of input on environmental matters without getting into an interest group for every single little issue. Interest groups will still form, but they generally end up meeting with EEAC, and we can sort of provide advice to them and help get the right message on to council.

**Mr Wiseman:** I just wanted to make a quick comment on something I think I heard you say. You can correct me if I'm wrong, but you said that to rehabilitate a marsh was about \$1.5 million—

**Ms Davis:** It was a particular marsh, it was Hullett in Bruce county.

**Mr Wiseman:** The studies coming out of the United States forestry now are indicating that you can plant trees but you can't restore ecosystems. It's very clear that even 80-year-old forests that have been replanted have no ecosystems in them, that the flora, the fauna, the lichens, the mosses, the birds, the bees, the flowers, the trees that were there before do not regenerate; you can have a tree but you don't have a forest.

**Ms Davis:** Mr Carson could probably answer that.

**Mr Peter Carson:** That's definitely true. We're certainly not at the stage of understanding of these ecosystems that we can even start to recreate them. I think that's only going to happen over a long period of time. What we can do is preserve small pieces which will allow us eventually to—these pieces act as sort of a seed source and you can have a spreading out on the edges and eventually you can reach some degree of rehabilitation, but we're certainly not at the stage where we can even understand the processes, much less recreate them.

**Mr Wiseman:** Provided you have a large enough gene pool that will allow the kind of migration that is necessary in that they are interconnecting because, with an isolated little forest, the gene pool could very quickly become a problem.

**Mr Carson:** Yes, actually I think the largest protected area in the United States has suffered 11% loss in gene pool over the last 100 years, and this is their largest natural area. It's quite true.

**Mr Wiseman:** One last quick question.

**The Chair:** Actually, Ms Harrington had a question, if you wouldn't mind.

**Mr Wiseman:** Sorry, I didn't know. I'll ask later.

**Ms Harrington:** Thank you. I think you've made a very interesting presentation and your point about accessibility and timeliness being important to the fairness of the process, I think, is something we are all hearing and

hopefully taking to heart. I'd like to point out also the cumulative effect of change and that's what Mr Wiseman was getting at too, that it's not one little thing, it's the whole thing together that we have to look at.

You began your presentation with talking about the purpose of this act and that was, as you quoted, "a sustainable economic development in a healthy, natural environment," but I wasn't able to actually write down what you had proposed as a purpose. Did you have a purpose that you would like us to note?

**Ms Davis:** Yes.

**Ms Harrington:** Do you have a copy of your brief?

**Ms Davis:** Yes, I can leave this. We would like a separate statement stating precisely that the act guarantee the maintenance of the natural environment for present and future generations.

**Ms Harrington:** Do you think that's actually possible with development?

**Ms Davis:** Is it possible to guarantee? I don't think we have any choice for our future generations. Perhaps Nancy can answer you.

**The Chair:** One quick answer then we'll have to end.

**Mrs Tilt:** This will be quick. Mr Wiseman's comment about not being able to restore an ecosystem in 80 years is right on. It takes many, many, many years, centuries, to establish an ecosystem. It can be destroyed in a day by a bulldozer and that's precisely why we should be very, very careful in our decisions before we barge ahead and do something. These areas still can be protected and we can work around them.

**Ms Harrington:** You are only talking about certain areas. There are other areas that can be—

**Ms Davis:** Well, yes. I understand that the official plans are going to try to keep development out of rural areas, so we hope in the region that woodlots will not be developed for houses. I'm thinking of this road that five years ago when I moved to the area was pristine and now it's a strip development. There's not a beast in sight except two-legged ones. I'm sorry, that was rude, it wasn't intended as a slur.

**The Chair:** We've had many quick questions and we're running out of time. Thank you very much for participating at these hearings. We appreciate your input.

**Ms Davis:** Thank you very much.

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MICHAEL SMITHER

**The Chair:** We call upon the Municipal World magazine, Mr Michael Smither.

**Mr Michael Smither:** I appreciate the opportunity. I'll keep my initial comments very brief. I have provided a written copy. The first part in the white pages are my basic recommendations; the second part, the green, is a redraft of the proposed pecuniary interest act. I think the first issue which we should focus on is the need to place Bill 163 into a proper context and there's the chance that this will not be done, so please bear with me.

In 1967, the Ontario Committee on Taxation looked at restructuring and refinancing of local government and in bringing in their recommendations they set out two

imperatives: (1) that there be political accountability, and (2) that we maintain a community of interest. Over the last 27 years, both of those recommendations have been widely disregarded, and I suggest many aspects of Bill 163 also disregard them.

If we look at the pattern that has evolved over that period, we see the introduction of metropolitan, regional, restructured counties, amalgamations, the creation of new structures of government that have eliminated 130 municipalities. In so doing, they have eliminated hundreds, thousands of opportunities for electors to run for office and to vote for those offices. If we look in the same period, we see school boards cut from over 2,000 to 172. Again, thousands of opportunities to run for office have been eliminated; thousands of opportunities to vote for those offices have been eliminated.

If we look at the term of office for council, we see it change from one and two years to three. Millions of opportunities to vote and for the electors to express themselves and to run for office have been eliminated. If we look at current legislation, we see reduction in sizes of council, we see other amalgamations, we see a compression of power at the local government level and even though the majority of people who are elected and running our local governments are decent, honest people, we also see a change, a trend towards some people becoming involved in local government with ulterior motives. But, more than anything else, we see a public perception and disillusionment and a feeling of isolation.

I suggest to you one of the major problems that has occurred is that, in legislation, the Legislature has responded to the response to the problem and not to the problem itself, and I suggest certain aspects of Bill 163 are going to do precisely that.

I will not run through all the points I have made in my brief, but I would ask you very sincerely to keep that perspective in mind. There is a major decline in electoral opportunity to participate. We've virtually eliminated the volunteer element. People are feeling isolated from their local governments. They sense they are no longer part of a community; they're no longer local and this is a major underlying concern.

Legislation that we brought in over the years has imposed further constraints on the people who run for elected office, increasingly so. You see campaign contributions being listed; you see conflict-of-interest rules tightened; you see all kinds of things done to make it so that you can constrain the monster that has been created potentially in the public's mind, but you don't see the issue of public participation being addressed, and a number of aspects of Bill 163 will again limit the public participation.

I'd like to refer first of all to the one Controller Hopcroft mentioned this morning, the question of privilege, and it is a crucial one. Last Wednesday I chaired a session at AMO with approximately 800 to 1,000 people there. In that session, it arose there are currently about five cases involving libel and slander of members of council across this province. One mayor at the meeting stated if he hadn't won his case, he would have been bankrupt. Another one indicated he is being sued for \$1



million. That is a major issue, there was a major concern and libel chill at that meeting. I asked the question: Excluding the lawyers present, can anybody in this room tell me what the rules of qualified privilege are and when they apply to a municipal council? Not one person in that room answered and understandably so. They are buried in the common law.

In the Legislature, you make most of your crucial decisions in cabinet behind closed doors, in caucus behind closed doors, and when you do speak in public you have absolute privilege. You now bring in open local government, which is generally widespread across this province anyhow, and you are placing the municipal official in a precarious position because you have totally disregarded, in Bill 163, the issue of privilege. It's a crucial issue, I suggest even irresponsible, not to have addressed it.

In my recommendation I have suggested that the rules of qualified privilege, and I have drafted out the suggested piece of legislation, be included in the statute so at the very minimum the members of council can be aware of what those parameters are.

At the AMO conference, the suggestion was made that absolute privilege should be conferred on councils. I don't disagree with that, my only concern is I doubt the Legislature has the ability to give that privilege. Your own privilege, as legislators, is precarious enough if you look at the background to the legislation. I don't know if you have the power to give it to municipalities but, at the very minimum, you should be codifying the rules as they apply to qualified privilege. If you don't, you're doing two things: You're eliminating a great many decent people from running for office because they don't want to be threatened in this manner, you're preparing a hidden trap for those who unwittingly do so and compounding the problem that we've seen over the last few years.

The second point I would raise is the question of pecuniary interest. The bill's schedule on the disclosure of interest act omits the word "pecuniary" from the title and omits it from numerous sections, but at the same time it defines "pecuniary interest" and includes it elsewhere in the bill. That may seem a minor technicality. I suggest it is not because if you use the word "interest" as a means for disclosure and a direction for disclosure, you're dealing with all kinds of things: real and tangible benefits, economic advantage, pecuniary interest, non-pecuniary interest, bias, non-pecuniary bias and merely a curiosity about something. You create a point of absurdity.

Again, it's a deterrent to people who want to run for office and need some certainty. Obviously, the statute must refer to pecuniary interest all the way through. It is the monetary aspect of the office and the concern of influence there that you're trying to address.

Another area in the bill which I have concerns about—is it was again addressed by Controller Hopcroft—is the question of influence. The current legislation speaks of influence before, during or after a meeting by the member; it does not preclude the member from a having a member of their family or their legal adviser meet before

council and represent their point of view. You're merely trying to remove the individual from influencing their fellow members. The new legislation is extensively drafted to preclude anybody from participating in that capacity. It also extends to employees, correctly so.

What I have proposed, and again I have drafted some legislation and put it in here, is saying in effect that you keep the principle that you're advocating, you extend it to include statutory circumstances, which are omitted from it, and you also put in a subclause permitting somebody else to represent the member when the member has disclosed, provided that person acknowledges the relationship with the member.

I would suggest to you the section as it's drafted now would not withstand a charter challenge because it obviously places the member in a position where their right to equality before the law is being inhibited. Council frequently acts in a quasi-judicial capacity. The example was cited this morning of a minor variance appeal. Clearly, that is wrong, not to be able to be represented in circumstances such as that. So again, that section does need to be changed.

Again, it has an inhibiting effect if you don't. You're limiting the people who will run for office because of their personal involvement and they're the very people in the community that you want to be involved in your council. You merely want them to separate their private and public interests.

A similar situation arises with the question of advisory members of advisory committees. Again, that is ignored. You take many committees: LACAC committees, specialist committees. The very people the council wishes to appoint in an advisory capacity are the ones who have expertise in that particular area. If you preclude them by making them disclose and abstain, you remove from the ability of the municipality to use that expertise.

Simply, you address the issue by setting out a different definition for advisory committee. You make it so the member can disclose, require their recommendations to council to indicate the disclosure, but allow them to participate otherwise in the decision-making process. If you don't, you again effectively limit the people who will participate in those capacities.

I have a number of other points here which are technical ones. I will not dwell upon them. But I would be pleased to quickly respond to your questions.

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**The Chair:** Thank you very much. We'll begin with the third party.

**Mr McLean:** I thought the government was next. I'm first, all right?

**The Chair:** If you like.

**Mr McLean:** Well, certainly. I'm pleased to see Mr Smither here this morning because he always has some good recommendations and I appreciate them. Unfortunately, I haven't had time to go through them all, but I want to maybe start with the posting of notices. There's been some discussion this morning with regard to putting up notices if there's going to be some rezoning or that type of thing. What is your opinion on that?

**Mr Smither:** I agree that it is a problem area. I've had personal experience of this quite recently. The act currently gives the discretion to the municipal clerk to use a number of different mechanisms, one of which can be publication in a local newspaper if there's consideration that this is sufficient to meet the needs of the people. I'm aware of one municipality where that was done and the majority of the people who were involved and affected by this rezoning did not know there was a public hearing and did not attend the public hearing, but the clerk had complied with the law, so there was no recourse.

**Mr McLean:** Yes, they do comply with the law, but is that giving the people out there the opportunity to know that there is something taking place within their cul-de-sac or within their subdivision, a minor variance? Do you think there should be a notice on the lawns or on their property that there is something taking place?

**Mr Smither:** I think there are a number of mechanisms. Probably what should be done is use of the newspaper and use of some other mechanism parallel with it. Certainly it's a discretionary point right now, but not everybody reads the newspaper.

**Mr McLean:** This morning Mr Hopcroft raised the issue with regard to a vote in committee of the whole in closed session. Do you agree with that point?

**Mr Smither:** Yes, I do, very strongly, because the recommendations in the legislation are impractical. You have to be able to go through a process. First of all, you're having closed meetings to start off with on some issues because it's essential they be closed. You're put in a position of arising from that meeting and either—one of two things—disclosing what the meeting is about and what the issue is by taking a public vote, or, alternatively, manipulating it into some vote which is cast in language which doesn't convey the message. Either way, the public isn't going to gain by it. Very clearly that's an issue where it should come down to the final vote in the council being where it is cast, but in the committee certainly there has to be that process of giving advice and direction to staff.

**Mr McLean:** In the conflict-of-interest guidelines, the clerk will be the one who will take your application. With us it's a commissioner. Whatever the clerk has is public knowledge. Do you feel the conflict-of-interest guidelines are too stringent for small-town Ontario?

**Mr Smither:** I've strong mixed feelings on this going in both directions. There is, first of all, unequivocally an invasion of privacy. It's also contrary to the municipal freedom of information act the way it is drafted, in my opinion. But if you legislate it that way, it probably won't be. You've got an invasion of privacy. You've got a major impact upon individuals, not only on the persons running for council, but on their families and on their employers, on any number of aspects of it. I also have a reasonable doubt, if you get a person there with an ulterior motive, that this will achieve anything anyhow.

The recommendation coming to you on September 13 from AMO is that you adopt the Alberta stance, which will provide that there will be a filing with the clerk which shall be confidential and shall only be accessed if

there is a complaint that is related to that matter. That's a suggestion coming forth from that.

You take your own disclosures, which I hear thrown out as being a reason for this. Your own disclosures are made, they're edited by the commissioner, they are filed in Toronto. Correct me if I'm wrong, but they're not filed in your constituency. But these are going to be filed in the constituency and open to public inspection. That is a very, very sore point; again, a major deterrent to decent people. It isn't the ones who would run with the ulterior motive. They just see that as one more obstacle they can vault. It is the decent people who object to that kind of invasion.

**Mr McLean:** The other question I had, I was thinking—I had it all ready and then I got listening to what your comments were and it slipped my mind. It had to do, I guess—did AMO pass that resolution, the Alberta resolution, at its conference last week?

**Mr Smither:** I'm not absolutely sure on that point, but I do know that their committee that has been studying this will be bringing that forward as one of the recommendations, because I've seen their draft report.

**Mr White:** I'm interested in your comments in terms of the privilege issue, which was brought up, as you know, this morning, and also the issue of the open vote versus the closed vote. The municipal freedom of information was reviewed, as you know, earlier this year pretty extensively. There were a number of deputants, a number of people, who expressed grave concern about this issue of closed meetings and what can be decided in closed meetings.

Your recommendation of motions revealing the substance of the matter under consideration, pretty well detailing what the discussion was, what the nature of the motion is, would to some degree deal with those concerns that were dealt with at the time, but it does seem like a very large concern still. How does one ensure that the public has full knowledge of and access to the knowledge of what has been discussed in closed meetings, what has been arrived at, which may very directly affect them?

**Mr Smither:** I personally don't object to the fact that the majority of the meetings are going to be open. I think it's a move in the right direction. I would say that it is a move already made by the majority of municipalities.

Interestingly, the present municipal freedom of information act contains a gross error. If you read it directly, what it is saying is that it exempts from disclosure any information from a meeting which by statute is closed to the public. Well, the meetings are not closed by statute. The statute merely opens the council meeting. They're closed by common law. So, quite frankly, at the present time you can go and get the minutes of any closed meeting anyhow. But that's an error in the statute. Ironically, when you bring in your new Bill 163, you will be stipulating by statute what will be closed and you will be implementing that section for the first time.

I think personally that the majority of meetings should be open, but I see it as pointless to have other meetings which are recognized as necessary to close and then to encumber them by saying the votes should be taken in



the open. Obviously that's irrational. What you should be doing is identifying categorically the ones that should be closed, limiting them and making sure that they are closed and the privacy is respected. As Grant Hopcroft said this morning, in a majority of instances what is decided at the closed meeting comes forward for council ratification anyhow, because committees recommend. Committees follow a direction of council; they do not themselves make the decisions, or at least they shouldn't.

**Mr White:** The point is, though, that what is finally decided upon in an open session needs to be clarified. There may have been a vote taken, but the public won't be able to appreciate the nature of that vote unless there is an adequate explanation.

**Mr Smither:** I agree with you 100%. It's not unknown for them to rise from committee of the whole and pass a resolution in council to say, "We adopt the recommendations we agreed to in the committee of the whole," and you have no idea what they are. Obviously that's inappropriate. But to make—it's totally impractical. In the course of a committee meeting you sit for an hour probably to make decisions, give direction to staff; you probably take about 10 or 12 votes. You very easily could. It's just totally impractical to jog in and out and it serves no purpose.

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**Mr Winninger:** Just a quick question. It's one of clarification regarding your comments on pecuniary interest on pages 7 and 8. It appears to me that what you are asking for is further precision in how "interest" is defined and that wherever the word "interest" appears, it should be qualified by "pecuniary" interest. Is that correct?

**Mr Smither:** Yes, absolutely correct. You're defining "pecuniary interest." In some places in the act you are saying merely "interest." I am saying you should use the words "pecuniary interest" throughout. It is dangerous not to. It isn't a minor point.

Now, the argument might come back in rebuttal that if you read the section, we've used "pecuniary interest" in the first instance and we've used "interest" somewhere else in the same section; we know what we're referring to. That doesn't work, because if you read some of the sections, you've used "pecuniary interest" all the way through.

**Mr Winninger:** Okay, I think I understand your point there. You have, however, given several alternative meanings for "interest" on page 7, such as, "an economic advantage, that is not necessarily pecuniary," "any real and tangible benefit...to the personal benefit of a member," "a private non-pecuniary interest." You're not saying that those kinds of interest aren't relevant and shouldn't be disclosed in a municipal situation?

**Mr Smither:** I'm saying that the disclosure, to be practical, has to be confined to pecuniary interest, which is what the current legislation is saying. If you extend it beyond that, you reach a point of impracticality. I am interested in the proceedings of this committee; I do not have a pecuniary interest in the proceedings of this committee.

**Mr Winninger:** Don't you think it would be relevant to an impartial observer whether a city councillor has an economic advantage he or she may derive from a particular decision?

**Mr Smither:** The economic advantage—I note it in here and I would like to delete it at this point, because obviously that's a pecuniary interest and it comes within the scope, so you're absolutely correct. But if I have a bias—I mean, the legislation recognizes bias as only applicable in a quasi-judicial situation. The Planning Act particularly excludes bias from the application of the Planning Act and the deliberations there.

But when you start putting a word like "interest" into this act, you're nevertheless going to be in a position where you're going to have to disclose and you're literally going to have an unworkable situation. The focus of the legislation is the monetary impact, and that is what the "pecuniary interest" refers to. If you're going to say "interest" and you want to include the scope that is here, then define "interest" and include all these items, and then try to fill the seats on council, because nobody will be able to run.

**Mr Winninger:** I think I understand what you're saying now and I don't disagree with you. In London, by the way, it seems we've never had any scarcity of people running for municipal office.

**Mr Smither:** But you have pecuniary-interest cases. The first one that occurred under the new legislation was in the city of London, *Blake v. Watts*.

**Mr Grandmaitre:** Thank you for a very interesting brief. If I may quote you from the prefatory or opening remarks, you touch on something that I'm sure is of great interest to this committee, the decline in electoral opportunity. You go on to say that in the last 27 years, the number of municipalities has gone from 964 to 830, our school boards have gone from 1,400 people to 172, and the term of office has increased to three years from the two-year term. We all know that bigger is not necessarily better. Are you saying that it is a mistake of the previous governments in the last 27 years—

**Mr McLean:** The last 10.

**Mr Eddy:** No, 27.

**Mr Grandmaitre:** —it says 27, in the last 27 years—to eliminate these municipalities and school boards because we're also eliminating people from participating in the process?

**Mr Smither:** I'm saying that to ignore the recommendations of the Smith commission in so doing was a mistake. I think it is also wrong not to look at this aspect when you are viewing what you're planning to do with Bill 163. Make sure that you don't compound the problem.

It's very, very hard to turn the clock back, but I get literally thousands of phone calls every year at Municipal World and I've noticed a particular trend, a change. I get calls, naturally, from elected representatives, I get them from a lot of other people, and there is a growing concern about the isolation the people feel from their local governments. There's a tremendous concern about that, and their inability to participate. And there's a growing

concern and perception of the cost structure. It isn't related only to your elected officials. If you look at your administrative structures of local government, they have changed also. On the basis of efficiency, you've adopted the administrator system in the last 20 years also. Again, there's a perception of a concentration of power.

I'm not saying that the public is necessarily always right; I'm not saying turn the clock back either. What I am saying is, be aware of this as an underlying cause of the public concern when you are adopting your legislation like Bill 163 and view the recommendations you're making in that context. If they are going to further inhibit that, then you must, I suggest, have regard to it. If you're not going to have regard to defamation, you are limiting the people who will run. If you're not going to have regard to influence, you're doing the same thing. If you're not going to allow advisory people to participate, again you're doing the same thing.

Many other things: The disclosure of assets and liabilities is a major concern to a great many people. It isn't, I suggest to you, the ones who have nefarious objectives; it's the decent people who just don't want to be exposed.

I think in all seriousness that you have done a better job in drafting this legislation and the regulations you propose to focus it upon certain things that—and you've almost reached the point now, because of the situation that's created, where you're going to have to have something of that nature. But I think it's imperative that you look at the consequences of the legislation and try to focus it on the problem, not on the response to the problem, which is what's been happening.

**Mr Eddy:** Thank you for coming, Michael. I'm pleased that you threw in there for a moment about Municipal World. Certainly it does a tremendous job in keeping us advised of municipal and school board problems and many others. I'm so pleased that you were able to come and make a presentation.

I agree with you for what's happened to local government and school board governance in this province. It's made a tremendous difference. I'm talking primarily about the rural areas because I know them best. So thank you for bringing a thought-provoking and challenging criticism of the act. I hope that many of the things you've spoken about will be paid attention to.

I just have to say about the consolidation of school boards, we'd already eliminated the one-room schools in the local community centres, but in the case of my board of education, when they started closing the rural consolidated schools and changing everybody to large urban schools and putting dozens of portables up, it's a very sad thing, along with all the rules. You try to make a presentation to a board of education and see what the rules are you must follow. I've been in that particular situation. It's disgraceful. It is not democratic.

You've hit on many of the things, and we certainly here on this side will be paying attention to many things. I really think we shouldn't be dealing with so many things in one bill. Each of the things we are dealing with deserves a separate process to get to the heart of the problem and correct it and all cooperate. Thank you.

**Mr McLean:** Can I have one question?

**The Chair:** We normally don't do this, but go ahead.

**Mr McLean:** Just your view, Mr Smither, with regard to county restructuring and regional government. Do you think the government is heading in the right direction by promoting that?

**Mr Smither:** I think there are circumstances in which regional government and restructured counties are an appropriate vehicle. You have to remember always that local government is intended to be local. It's meant to reflect the particular circumstances in the local area. So you can't look at it globally; you've got to look at each one particularly, and I suggest you also look at the Smith commission's recommendations on accountability and community interests when you're doing it.

**Ms Harrington:** I really thank you for coming, Mr Smither. You obviously bring a vast degree of information with you.

You talked about there being fewer municipal politicians. Certainly the public out there doesn't, I don't think, want to see more politicians. But you also say people are feeling isolated. How can you get people more involved and yet not increase the number of politicians? I think there is some way of doing that. What would you propose?

**Mr Smither:** The first thing is I would correct what I perceive as the deficiencies in Bill 163 which are going to preclude people running for office, preclude people acting in an advisory capacity. I think every council should be looking at trying to extend its committee structures, its advisory processes, out to the people and encourage the openness.

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I'm not opposed to open local government; far from it. I think that's a good process but it has to be workable. You do not put people's heads on the block to accomplish a philosophical objective, and that's what Bill 163 is going to do if we're not very, very careful.

**Ms Harrington:** Well, we will be very careful.

**The Chair:** We ran out of time. Sorry, Ms Harrington. Mr Smither, we thank you for your submission. We found it very informative.

#### TOWNSHIP OF NORFOLK

**The Chair:** We invite the township of Norfolk. Welcome to this committee, Mr McIntosh. Would you just do us the favour of introducing the other people who will be sitting with you.

**Mr Jim McIntosh:** Good morning. My name is Jim McIntosh. I'm a planner for the township of Norfolk. On my right is Mr Jack Boughner, who's a township of Norfolk councillor. He also sits on Haldimand-Norfolk regional council as, I believe, the deputy mayor. On my left is Mr Merlin Howse. He's the clerk-administrator for the township of Norfolk.

**Mr Eddy:** The mayor is present.

**Mr McIntosh:** The mayor is present. I was going to say that there are other representatives from the township of Norfolk council in the back. We're here to present a brief presentation mainly dealing with the planning



reform issue in Bill 163. The township of Norfolk has been actively involved in responding to the Sewell report as it travelled around the countryside, and went to the extent of having its own public meeting, which was attended by some 125 people. It shows quite an interest, in the township of Norfolk, on planning issues.

A bit about the township. It's one of six area municipalities within the region of Haldimand-Norfolk. It's predominantly agricultural and rural, two small urban areas and 14 hamlet areas. The current population is about 11,000. The population forecast 20 years from now suggests a population of about 13,000. Of the total population, about 14% resides in the two urban areas in the township, so you can see the population is mostly rural.

The total land area of the township of Norfolk is about 176,000 acres. Approximately 47,000 acres are forest-covered. There are 29,000 acres of provincially significant wetland, and if one adds other "significant" ravines, valleys, stream corridors and then adjacent areas, clearly 50% or more of the township would be protected, or sterilized, by some people's definition, by policy statement A.

We request that the committee consider the effect of planning reform on relatively small rural communities and recognize there are significant differences between larger communities, subject to higher levels of development pressure, and areas like the township of Norfolk, which is relatively slow-growing and rural in character.

The township has a keen interest in the planning reforms out of necessity. Opportunities for providing a diversified economic base are limited. There is very little that we can do in terms of incentives to attract and foster business, but there are lots of things that can happen to scare business away from an area like the township of Norfolk.

In general, the bill includes a number of positive changes to the legislative framework of the planning process. This response focuses on a few key concerns which are the most significant issues from the perspective of the township.

First, the reforms suggest that there will be a "...clear delineation between provincial and municipal roles in land use planning, integrating environmental concerns into the planning process and reflecting the diversity of municipalities across Ontario." While these objectives are enthusiastically endorsed, the effect of the policy statements as proposed do not appear to acknowledge any municipal diversity. As far as relatively small rural municipalities are concerned, the policies would unnecessarily curtail many reasonable opportunities for development.

As in earlier submissions to the Sewell commission, it's the position of the township of Norfolk that the proposed change to the phrase "have regard to" to be replaced with "be consistent with" removes whatever little flexibility for reasonable interpretation is now available and eliminates any latitude for local judgement.

Since the policies blanket virtually any form of rural development, it's important to maintain some sort of ability to apply a reasonable interpretation to different circumstances that arise. With policy statements "no"

means "no"—there would not be any opportunity to make individual amendments even if there's a clear and obvious basis for some change.

Dealing with proposed policy statement A, "Natural Heritage, Environmental Protection and Hazard Policies," the restriction of development in significant ravines, rivers, streams and natural corridors poses some concern. While the necessity of protection for environmentally important features is recognized, the terms of the policy lend themselves to extreme interpretation, given the definition of "development," which includes everything from construction, additions, change of use to activities such as grading, filling or drainage works. The term "significant" is defined but remains subjective and open to a range of interpretation by those with different opinions or value judgements. The combination of these terms would place an unreasonable burden on proponents of development in the face of any challenge by individuals or groups.

The township of Norfolk has had experience with municipal board hearings on matters that were appealed by interest groups where the opinion was that the system was being abused, and these policy statements may provide more opportunity for delay and abuse of the system.

We have a comment on section A1.3. "Development may be permitted if it does not harmfully alter...or destroy fish habitat." This can be a particularly difficult issue to assess, given the apparent lack of standards to measure potential effects; for example, nitrates entering cold water streams and affecting fish habitat. We've had occasion, for example, where such an issue has arisen and a proponent was close to hiring a hydro-geologist to assess the situation, only to find out that the province has no standards to judge such an assessment. So I think the point here is that the implementation and response to these things should be thought out and put in place in conjunction with the formulation of the policy statements themselves.

The township has serious concerns over the method of establishing policy relative to certain lands without the precise knowledge of the location and extent of lands affected. The blank-cheque approach of establishing policy restrictions and so on without knowledge of what specific lands are affected somewhat deny the public meaningful access to the process, and not unlike the wetland policy text which was put through, with maps following later on. Those astute enough to know that their property may well be affected would have a reasonable access, but those others without knowledge of what a provincially significant wetland was or the criteria they might use to establish one pretty much would be denied access to the process and would only find out about the effects and implications after it's too late.

The proposed policy statement B, community development and infrastructure policies, poses some concern again. Extensions to services in builtup areas are to be permitted only if the amount of land can be justified based on population and employment projections. It is suggested that this policy be clear on the area to be included in the review of the justifications. The 1978

Food Land Guidelines, which are the guidelines being used now, state that all lands within the planning area be considered.

In circumstances where the planning area is a regional municipality or even a municipality with numerous urban areas, it's unreasonable to consider some of the farther-away locations which might be somewhat outside a local market area or lands affected. The two urban areas in the township of Norfolk are about 30 kilometres away from one another and growth in one has little to do with growth in another. We do have population projections and servicing allocation reports for each independent municipality in the township of Norfolk and indeed the region of Haldimand-Norfolk.

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Employment projections should be a factor worthy of some consideration, but not necessarily a requirement in a provincial policy statement. Some amounts of inter-municipal communities are expected, as are proposals for lifestyle and retirement communities, particularly in the township of Norfolk. Employment projections may be relevant in some circumstances and not relevant in others. In any event, it's an issue that I think could be adequately addressed in local official plans rather than entrenched in provincial policy.

Proposed policy statement D. The agricultural land use policies are cause for a great deal of concern for the township of Norfolk. Precluding any non-agricultural use from prime agricultural areas is considered too restrictive. The township of Norfolk is largely a rural community where prime agricultural land predominates. It is important in such a community to provide for some diversity: that is, small-scale commercial and industrial or even institutional uses which would serve the agricultural and rural areas. Alternative locations in existing communities are not always feasible or possible or indeed desirable. Settlement or hamlet areas in the township are predominantly residential enclaves. Directing commercial or industrial uses—for example, trucking businesses or corn-drying operations or machinery repairs—to these areas will only result in land use conflicts.

Furthermore, we've had examples in the township of Norfolk in the reuse of old buildings. We have one that was some time ago a propane tank manufacturing operation which sat vacant for I think close to a decade. Just recently, Titan trailers took over the operation there. It's quite a successful industrial manufacturing use and a good reuse of an existing facility where no agricultural land is being affected and virtually no impact on agricultural activities in the surrounding area is going to occur. Yet this forms an important part of diversifying the economic base in the township of Norfolk.

Certain public service facilities have been located in what would now be considered prime agricultural areas to provide their most efficient or convenient service. The township of Norfolk roads department is located centrally in the township of Norfolk. It's not in an urban or a settlement area but in a central location where it's located to provide the most efficient service. Given the number of service facilities like this that would occur in an area like the township of Norfolk, one would wonder how

much agricultural land really would be sacrificed to provide an efficient service for the community and wonder if that's something that really needs to be set down and precluded in provincial policy.

Present provisions in the township of Norfolk district plan provide for small-scale commercial and industrial uses serving or related to the rural economy, including such uses as abattoirs, carpentry shops, commercial kennels, electrical shops, grain dryers, metalworking shops, and the list goes on. The township of Norfolk would like to have those sorts of uses remain, or the flexibility to provide for those sorts of uses, and that those uses and their location and so on be screened through the zoning amendment process, which gives adequate process time for the involvement of surrounding land owners, be they farmers or otherwise, and the township of Norfolk council an opportunity to review the individual circumstance.

Conspicuously absent from the agricultural policy area is provision for recreation and tourism operations. Those uses seem to be addressed in the infrastructure policies, with some policies for justification, but I don't see where they're permitted in an agricultural and rural area. I'm thinking of the types of uses that the township of Norfolk is trying to attract: tourism and recreation operations such as golf courses, trailer parks and other such outdoor recreational opportunities.

With respect to severance policies, section D3, this section represents a change from the residential severance policies currently in place in the township and in fact the region of Haldimand-Norfolk. Since 1978 a one-lot-off-the-farm policy has been established, which through attrition or whatever will result in the situation where no more residential severances will be granted. It's not completely unlike the retirement severance policy in the policy statement. I think it would work towards the same end, but from the standpoint of the township of Norfolk it would be much more desirable to maintain the severance policy in place. It was somewhat of a contract with the community. People have now, since 1978, been able to live with that policy. They understand it. That is working towards a logical conclusion for severances, other than the surplus dwelling and infilling lots that are also provided for. The township would request opportunity to depart slightly from the theme and maintain the one-lot-from-the-farm policy that it currently uses.

With respect to interpretation and implementation policies, this section would require an environmental impact study for development proposals in areas adjacent to significant ravines, woodlots etc. If there is to be such a requirement, there should be measures in place to ensure that the studies are understandable by the public and can be dealt with expeditiously. It is recommended that it be clear that such studies are completed to the satisfaction of the pertinent decision-making body, for example, municipal councils, with input from commenting agencies rather than to have commenting agencies become the ultimate approval authorities.

Regulations, guidelines and criteria that deal with implementation, together with maps showing areas subject to policies, should be drafted and available to review in conjunction with policies.



That concludes the presentation. I'd be glad to entertain any questions or clarifications.

**Ms Harrington:** We drove Highway 3 last night. Would we have gone through your township? Where about are you?

**Mr McIntosh:** Quite likely. East of Tillsonburg all the way through to the Dunnville area would be through the region. The township of Norfolk has that section of Highway 3 which would be just outside of Tillsonburg to the urban area of Delhi.

**Ms Harrington:** Actually, we did hear more about Norfolk this morning. We had the Norfolk Field Naturalists talk with us briefly. Do you know of that organization?

**Mr McIntosh:** Oh yes, quite aware of that organization.

**Ms Harrington:** They did talk about an EEAC, which is an ecological and environmental advisory committee. Do you have one advising your—

**Mr McIntosh:** No, not at the township level. There has been discussion at the regional level about establishing such a committee. The regional planning commissioner and members of the regional council of development, industry and other groups such as field naturalists were sitting around a table dealing with streamlining issues, and that was one of the issues they were talking about, but it would be at a regional level. I'm not aware of talk about establishing one at a local area municipality level.

**Ms Harrington:** I would think that it would be good to have advisory committees at all levels. We heard just previously from Mr Smither about involvement, that people want involvement. Certainly you've stated that your particular township has a lot of very sensitive and good land that has to be preserved. I would think that you would welcome having your citizens involved in that particular way. You do say that 50% of your township would be protected by policy statement A. I think you called that "sterilized."

**Mr McIntosh:** I said some opinions would call it sterilized. The point being made there was that I'm not suggesting for a minute that we rape and pillage wetlands or anything of that nature, but a lot of the areas talked about in policy statement A I think are to be defined later on. I'm not entirely sure what a "significant" woodlot is, given the forest cover in the township of Norfolk, which is quite substantial. If it's going to fall into a no-development category, that's of some concern.

**Ms Harrington:** You would agree that a healthy natural environment for those lands is what you want for the future?

**Mr McIntosh:** No question. It's as important to the township of Norfolk as it is to anyone else, any other individuals or groups.

1150

**Ms Harrington:** I also wanted to touch on your statement here that to "change the phrase 'have regard to' to 'be consistent with' removes whatever little flexibility for a reasonable interpretation" etc. We, if you look at the broader picture across this province over the past, have

had some difficulties, and all municipalities have, with a very vague statement like "have regard to." It has been interpreted very differently. I think what all of us need for the future is a clearer understanding of what the province's policy statements mean. I would ask you if you would not agree that it should be clearer.

**Mr McIntosh:** Actually, I don't think I agree with you on that score. It's been my experience that the "have regard to" phrase that we operate under now doesn't provide a great deal of flexibility at either the Ontario Municipal Board or with provincial agencies. Taking what little flexibility there is now and replacing that with no flexibility in my mind is inappropriate. There should be some latitude.

**Ms Harrington:** I think all of this has to be clear and strong in every part of this province.

**Mr Eddy:** Thank you for coming forward with a presentation from a purely agricultural township, if I can use that term, realizing of course that you do front on Lake Erie and have areas that border on the lake.

I'd like to clear up a bit of a problem, because I think you're the township of Norfolk in the regional municipality of Haldimand-Norfolk, but the Norfolk naturalists who were before us previously use the term from the old county of Norfolk, which includes several local-tier municipalities. So there is a difference there in the area and you're talking about the region.

I want to thank you for taking the initiative to have a public meeting on the Planning Act and discuss it from your own township's point of view. I know there are other meetings going on, because Haldimand-Norfolk is reviewing its regional plan. Of course, that's a bit of a problem too because we heard from the Haldimand-Norfolk representatives yesterday and realized that Haldimand-Norfolk, when it was established 20 years ago, was one-tier planning and has changed to a type of two-tier planning with district plans, as I understand.

I'd like you to comment on the region's request, if you would, to the province to delegate some approval authority to the region for approving changes to district plans. If you'd just hold that one for a minute, you've pointed out, I think, and brought very forceful views to us on the difference between urban and rural municipalities, and there are so many differences. What I see in urbans is that everything goes and in the rurals, in some places, they try to save everything, which is good from many points of view, but such a difference.

I tend to agree with you under "Agricultural Land Policies." You've stated, "It is important in such a community"—such as the township of Norfolk—"to provide for some diversity, ie, small-scale commercial and industrial or even institutional uses which would serve the agricultural and rural area." That's what you're stressing, that point of view, and also bringing in about the possibility of recreation and tourism, because you're on Lake Erie. I recognize your interest in that.

What I see as almost necessary is to have some different rules for rural municipalities. We've been told that the same shoe doesn't fit and can't fit everybody in Ontario. I'd like you to comment on that. I think you've

talked about that. Those two points, please.

**Mr McIntosh:** First on the rural issue, I think the township of Norfolk is different than a lot of urban areas or areas on the fringe of urban areas that are subject to different pressures. The small-scale commercial and industrial developments we're seeing aren't really escaping to Norfolk to beat land costs in London or Hamilton or Toronto or anything like that; they're mainly there to service the area. We've had numerous examples of businesses—trucking comes to mind—that service the agricultural industry in the area where policies, and even regional official plan policies that are being debated now, would direct those sorts of uses to hamlet areas. Hamlets have evolved from little communities that used to have maybe some industrial or some commercial uses to mainly just residential enclaves, and it's totally inappropriate to jam some of these industrial uses into those areas. It's just asking for trouble.

When you look at the township in Norfolk there are, I think, 418 parcels of land that are three quarters of an acre to 10 acres, and that would represent over 700 acres in the township of Norfolk. If there are opportunities on some of those parcels that aren't being farmed now for some of these small-scale uses, is there any damaging effect on the agricultural land? I think not on agricultural activities. Those sorts of issues can be screened through a zoning process quite accurately by the township council.

**Mr Eddy:** When we're quite willing to add an area like the township of Westminster, 64,000 acres, to the city for development, it seems strange that you see this restricting you from any development, because that will all go.

**Mr McLean:** I want to ask you a question with regard to your hamlets. You indicate you have 14 of them. This morning Perth was in. They don't want any more severances. They have a policy of no severances in Perth. This legislation now is not going to allow any more severances in hamlets or the area surrounding or the municipalities other than the retirement lot that's in the agricultural lands policy: one lot for a farm operation for a full-time farmer of retirement age. That's what's in there now, and you have to be farming as of January 1, 1994. What's going to happen with your hamlets as the legislation is now?

**Mr McIntosh:** First of all, I hope it's not an illusion but I thought that there was some provision for a development in hamlets in the policy statements.

**Mr Hayes:** There is.

**Mr McLean:** What is that statement?

**Mr Hayes:** Just to clarify things, if I may, we're talking about protecting the prime agricultural land to be used and protected for agricultural use and then we have the list. I'm sure you have a copy of that. There's nothing in here saying that you cannot do any development in a hamlet for commercial operation or whatever the case may be. There's nothing. We haven't changed any rules to say that you're not going to be able to do it. I think that's clear.

**Mr McLean:** Can you build infill within a hamlet?

**Mr Hayes:** Yes.

**Mr McKinstry:** Maybe I could offer a clarification. There are policies in policy B which talk about what municipalities would be permitted to do in their settlement areas, and we've called them settlement areas because that would include hamlets, villages and so forth. What we're saying is, "Areas proposed for development which are within the settlement area but which are not builtup areas" should be "logical extensions" and there should be some kind of planning for that development.

**Mr McLean:** Which number are you reading?

**Mr McKinstry:** This is on page 8 of the policy statement.

**Mr Hayes:** Number 9.

**Mr McKinstry:** Yes. I guess the policies really are structured so that we would encourage development to take place in hamlets where servicing could be reasonably accommodated.

**Mr McLean:** Oh, servicing.

**Mr McKinstry:** Yes.

**Mr McLean:** Septic systems?

**Mr McKinstry:** That's one possibility, or the other possibility is some kind of public communal system.

**Mr McLean:** The environmental impact study for development proposals, you raised that issue. I know what the policy reads. What's your interpretation of it?

**Mr McIntosh:** The environmental impact study: We've had occasion to go through a number of them under the present wetland policy statement. To the public it seems quite mysterious and, I guess, to the agencies, like the Ministry of Natural Resources, in the case of wetlands. When it fell in their lap I think they had to quickly try to respond and figure out what it meant, what do we want to see and how much do we ask for and that sort of thing. I think the main concern is having the agencies that are going to be involved in reviewing these things know how they're going to review them and what will be required at the same time the policy is being adopted.

**The Chair:** We'd like to thank all of you for taking the time to make this presentation to us today. Thank you. This committee is recessed until 1:30.

*The committee recessed from 1200 to 1334.*

COUNTY OF HURON

**The Chair:** I call upon the county of Huron, Warden Allan Gibson and Mr Gary Davidson, director of planning. You have half an hour for your presentation. We ask you to leave as much time as possible for the members to ask you questions. If you can do that, that would be great.

**Mr Allan Gibson:** Thank you, Mr Chair. Ladies and gentlemen, I'm the warden, Al Gibson, of Huron county. We have a brief here. I'm going to ask the planning director, Gary Davidson, to go through it at this moment.

**Mr Gary Davidson:** Thank you for the opportunity to make this presentation. It probably will be about 10 minutes and then there'll be room for questions if that's required. Maybe if there aren't a lot of questions, you'll get out of here earlier today.



**Mr McLean:** Short answers.

**Mr Davidson:** Short answers? Okay.

The brief has been passed around to you and you can read it in detail at your leisure. If I could ask you to turn to page 2, what the county of Huron would like to focus on are some larger issues which we feel affect rural Ontario as a result of Bill 163. There are three concerns that we want to talk about and then make some specific suggestions.

The first one is a fairly general one and it's not one that's probably directly in the purview of this committee, though we'll make the point anyway, and that is that the provincial policy statements in their sweep probably have a large impact on rural Ontario which is larger than on urban Ontario and in fact in many instances do the planning for them.

We have a concern over the change from "have regard for" to "be consistent with." We feel that it's another indication of a control system that does not allow rural Ontario to try to create its own vision and its own future.

The third major point, and this is the point that refers directly to the act and that the presentation focuses on, is the failure to empower counties in the same way as regions, thereby making counties second-class citizens.

The notion and the concern over the relationship between counties and regions comes out in a few areas. The first one has to do with official plans. Regions in the act are given the authority to approve local official plans as long as they have their own regional official plan. Even the two regions that do not have official plans, Peel and York, have this power preserved for them when they do pass official plans.

With respect to counties, the act uses the notion of prescribed counties and doesn't indicate in the act what the criteria for that prescription will be. It is felt by the county that regions and counties should be the same with respect to the ability to approve local plans and it should be based on whether or not an approved official plan has been approved by the county.

A similar situation exists with respect to subdivisions. Counties are required to request delegated authority for subdivisions and regions are given it as a matter of right. Regions are given it as a matter of right whether or not they have an official plan. It is felt that with respect to counties, if a county has an official plan which is approved by the minister, they should have the right to approve subdivisions, and the same criteria with respect to staff capability should be used for those counties that do not have subdivisions to approve official plans. This is the same situation as with the regions.

The third component of the bill that we would like to address is municipal planning areas, the notion that a municipal planning area should be used only if a county refuses to prepare and adopt an official plan.

The way it is set up now, a municipality in the county can in fact opt out of county planning and opt out of the county planning system. In effect, this creates mini-counties from a planning point of view and it creates a situation where these small mini-counties, that is, two or more local municipalities, have the right to plan. Unfortu-

nately they don't have the financial authority to implement those plans, so you could have an interesting situation where a municipal planning area composed of two or three local municipalities would have a roads plan but the county in fact would have the roads budget.

It is felt that municipal planning areas, and it is understood why the province wants to retain this notion, should only be set up on the approval of the minister and that some discussions should take place before the establishment of a municipal planning area with the county.

**1340**

In summary, it is felt that counties should be treated in the same way as regions, that the authority to approve local official plans, the authority to approve subdivisions should be dependent on whether or not the county has an approved official plan and not on the fact that it is a county. Furthermore, the notion of a municipal planning area should be a power that is reserved to the minister and should only be used in consultation with the county.

We feel that these three changes are quite straightforward and that they would in fact serve to strengthen the proposed amendments. They remove the main problem of discrimination against counties. Also, by providing encouragements for the county to plan rather than sanctions, they will probably lead to more counties undertaking planning.

We'd like to thank the committee for listening to this presentation and would answer any questions, if there are any. Thank you very much.

**Mr Alvin Curling (Scarborough North):** Thank you for your presentation. I notice at the beginning of your presentation here, which was to be read more than what you had presented, stated that you had no problem and you could see it would have no great impact on your municipality or region. But then you proceeded to say quite a few things that will have an impact if the government did not adhere to these. I don't want to comment on that. I presume later on my colleague here, who has much more expertise on all these planning parts, will.

What I'd like you to comment on is the conflict-of-interest aspect of it. I notice you have not made any comment at all in that regard because of this great omnibus bill. I know that the way this government is pushing it through so fast with this great, large omnibus bill, you did not have the time to do that. But are there any comments you could make about the impact that would make when they change the conflict-of-interest regulations?

**Mr Davidson:** This report was dealt with by the county's planning and development committee and it did not deal with the conflict-of-interest component. That's why our report doesn't deal with that.

**Mr Curling:** Did it look at it and see if the changes would have any impact? You didn't take a look at it.

**Mr Davidson:** No.

**Mr Curling:** It's such a large bill, I understand.

**Mr Hayes:** They figure it's all right.

**Mr Curling:** No, it's that you didn't have enough time to do that.

**Mr Eddy:** Thank you for your presentation. You've zeroed in on some matters affecting county and you've shown leadership of course, Huron county, in county-wide planning for many years and economic development.

We've heard this before and I understand it's being considered by the ministry and, in view of the fact that the ministry is bringing in some amendments which we'll have shortly, I understand, I hope this is one of them, because a county is not a county. You have the restructured county of Oxford, which is a region. You now have Lambton county, which has brought the separated municipality in. You've reallocated service from the lower tier to the upper tier and there's a great variety of counties. I think the only proper way to do this is exactly the way you've said it: Let's have the rules for having the delegation of authority and do it that way.

But I would like to have your view on the presentation, if you're familiar with it, of the association of county planners of Ontario, which made a presentation the other day. I think the key there, the thrust, was to let counties decide whether they will have official plans at the lower tier, the upper tier or both. I wondered if you would care to comment on that, realizing that you have a situation in Huron county where you have an official plan at the upper tier only, I believe.

**Mr Davidson:** We have some at the lower tier. When you're looking at it from a planning perspective, when you're looking at a region, the region and the regional municipalities, the local municipalities within the region have certain planning authorities. A lot of people go on to say that regions are in fact different from counties and because of that, counties should be treated individually.

I'd probably go on to say that most regions probably feel that they are different. I don't think that the region of Ottawa-Carleton feels that it's remotely similar to the region of Muskoka. Similarly, counties have their own interests. A county in southwestern Ontario is considerably different from Renfrew county.

What all of those regions or counties have in common is the right to plan, and they hopefully will plan in such a way that reflects the views of their citizens both from a county perspective and a local perspective. I think the province, in treating the upper-tier municipalities in Ontario, the counties and the regions, should take a view that focuses on encouraging those upper-tier municipalities to plan and hopefully to allow them to plan in such a way that reflects the views of their citizens.

From a planning perspective, the more the local community agrees with the planning and buys into the planning, the more likely it is to be implemented. From the point of view that an upper authority, the province or the county, is enforcing planning regulations, the more, I'll use the word "creative," local communities can become at avoiding regulations.

In fact there are some counties in Ontario that have become notorious in their ability to evade what the province wants them to do. Part of that is, if you set out a system that tries to impose regulations, unless you have massive amounts of enforcement the local municipalities will just figure out ways to get around it.

I think the goal is to encourage counties, to encourage regions, to encourage local municipalities to do appropriate planning, and the way to do that, in my personal opinion, is to believe that they in fact will carry out those duties responsibly. I work with 26 municipalities, we do massive public participation, and I don't ever hear people or local councils saying, "We want to destroy the environment." They live in that community and I think that they want to do the best they can.

That's why it's felt that if the province takes the position of encouraging municipalities to plan, if they do plan they get certain authorities such as subdivision approval and if they don't plan then they don't get those authorities, but that is a fair way of treating them. Treating them any other way in fact basically leads to an antagonistic position.

I think, as most people realize now, most of the planning resources in Ontario reside in regions, counties and local municipalities. They don't reside at the province any more, and as the province continues to downsize, that case will continue to magnify.

One would hope that counties and regions and local municipalities just don't get into a creative fight of how to avoid provincial regulations. I think the way to do that—and a lot of the goals that the province have are quite admirable—but when the regulations become too directive, then municipalities just get very creative at avoiding them.

**Mr McLean:** That leads me to my question. In Understanding Ontario's Planning Reform it says, "Counties must prepare an official plan within a scheduled time frame where required by regulation." This morning the parliamentary assistant said he believes that's going to be probably three years, what that time frame's going to be. Are you aware that that is going to be part of the overall Bill 163?

**Mr Davidson:** No, this is the first time I've heard it.

**Mr McLean:** Okay. Then perhaps I could ask the ministry staff to clarify some of the questions that you have asked in your brief with regard to the time frame, the very essence of what he wants to know. It makes it difficult for us when you're bringing in some amendments. We don't know what they are and we don't know how many there are. You have regulations that you're going to bring in. We don't really know what they are. I got the one this morning from you verbally, but we can't see nothing in writing. Perhaps you might take this under consideration and advisement and have them prepared for next Tuesday.

**Mr Hayes:** Do you have amendments too?

**Mr Grandmaitre:** Your amendments.

**Mr Hayes:** But you have some too, right? We're not aware of them.

**Mr Cameron Jackson (Burlington South):** On a point of order, Mr Chairman: I believe that that matter has been clarified by the minister, and we're anticipating those amendments which the government is aware of. We should be getting them any time now. To avoid any of this jousting, I think it's fair that the minister gave us a straight answer that we should anticipate them. All my



colleague has indicated is the significance of having that information now to share with deputants. It helps the process. There's no political game involved here. Just for the record before—

**The Chair:** I think you made the point. You know it's not a point of order. Besides, you made the point.

**Mr Jackson:** No. The point of order was you have this additional request for information, and there is a pre-existing request for information for the record. Before the Chair applied a second request for information I wanted to make sure that we didn't lose sight of the fact that the minister has undertaken to share that with us, and his staff will. My colleague, and any other member of this table, shouldn't have to get these in a piecemeal, verbal fashion.

**The Chair:** Okay. Thank you, Mr Jackson. Were you going to complete your remark?

**Mr Hayes:** He made his point and I'm not going to go on with it.

1350

**The Chair:** Mr McLean, please go ahead.

**Mr McLean:** I was waiting for the ministry staff to comment with regard to the questions that they have in this brief with regard to the planning approval powers.

**Mr McKinstry:** I'm not clear exactly if you want me to go through each one of them.

**Mr McLean:** The proposed act and the municipal planning powers is what I was talking about. "The proposed act should treat regions and counties the same with respect to planning approval powers."

**Mr McKinstry:** Right. I guess the reason we didn't do that was because we felt that some counties were, as Huron is, and have been involved in planning for a long time; some counties have not. I guess the way we felt was that we didn't want to require every county to have an official plan. That's what we would need to do if we were assigning the powers as we have with regions, because every region is required to have an official plan. So that's why we said that the counties would be different in legislation.

**Mr McLean:** But according to this, it says, "Counties must prepare an official plan within a scheduled time frame." So you're saying that every country should have an official plan, aren't you?

**Mr McKinstry:** We're saying that every county would have an official plan according to the prescribed regulation but that there would be some flexibility of when that got prescribed, or maybe there will be some that would not get prescribed until a very long-term horizon.

**Mr McLean:** So then the minister is going to be the one who's going to determine when they should have their official plan.

**Mr Grandmaître:** If they're prescribed.

**Mr McLean:** If they're prescribed.

**Mr McKinstry:** In consultation with the county.

**Mr McLean:** Jeez, it leaves it pretty vague.

**Mr Davidson:** Which is probably one of the concerns

that the way the act is drafted leaves. We don't know from a county perspective. We assume that at the beginning a certain number of counties will be prescribed. We have several counties in Ontario that already have official plans and we don't know whether they'll start out as prescribed counties and have access to these authorities or not. Hopefully, and it was brought out in the brief, although I didn't dwell on it, that will be clarified with the legislation: What counties will in fact be prescribed?

**Mr McLean:** That's exactly what you asked. In the information from Municipal Affairs, it says that this approach was devised to deal with certain situations, differential growth, especially in eastern Ontario, and they haven't been clarified. What is that information that you have for that? They're asking for it.

**Mr McKinstry:** We don't have the regulation prescribing the counties. That work has not been completed, so that's why we haven't given it to the committee. But we are starting to talk about it. We do want to talk to the counties and we do want to talk to the implementation committees, the three of them that have been set up, in order to get some kind of public consultation on this issue.

**Ms Haeck:** Just quickly—and it sort of follows up on a number of the points that have already been made—one of the deputations that we heard yesterday in Niagara Falls indicated that their group felt that having a time limit for compliance with a range of the policies and having a plan would be something that they—and that was a food lands preservation group—would feel very positive towards. They referred to it as the Oregon model.

I would assume that in light of some of the comments you've made, you're not necessarily totally in favour of a tight time frame—they were looking at five years, not necessarily three—but maybe a comment with regard to how you would feel about a specified time frame for compliance.

**Mr Davidson:** A reasonable time frame, as long as the time frame allowed enough time for two components: One is the research component, which usually can be done quite expeditiously, and another for the public participation component. The notion of three years may be a little short. I think five years would be closer to what could be reasonably done. I don't think that you want to get into the situation of having an open-ended one or you could get into the situation of York and Peel that have just gone on and never done plans, although I think they've been working on them now for almost 20 years.

**Ms Haeck:** So in fact a set time frame I think would answer a number of your concerns and obviously put Huron and, I guess, Oxford and Perth and a couple of other counties very much ahead of those that to date have not really come into compliance.

**Mr Davidson:** One would hope that the minister, in prescribing county official plans, would recognize those county official plans that are already in existence. Some municipalities—Wellington, for example, which I believe is presenting next, has just recently had an approved official plan. Whether they should in fact do another one, just to meet some prescription, I think is a very valid

point. But I would hope that the ministry would recognize those plans that are already in existence because they're ongoing. Some counties, like Huron, are continually upgrading and amending their plans through local secondary plans. We have local secondary plans that are on the minister's desk now for signing. I don't think those municipalities should have to do another one.

**Ms Haeck:** Is there some time left?

**The Chair:** Yes, there is.

**Ms Haeck:** Oh, good. I wanted to say thank you for your comments on the first page, where you indicated that a lot of the policies that have been set out really won't add an awful lot of workload to what they're currently doing. We've sort of heard the reverse from a number of presenters, and I'm just curious as to what you're doing at the present time, which means that you may just have a few, as you referred to them, administrative wrinkles to deal with rather than obviously what some other folks seem to be doing.

**Mr Davidson:** Huron already has delegated subdivision approval authority. We were the first county in Ontario to have that. Since then the minister has delegated subdivision approval powers to Victoria and some other counties. So we already have subdivision authority and we've been doing that for several years. We don't see a lot of the changes in the act as adding a lot of burden to what we already do. I can see if a county had never done subdivision approval—when we took that on in 1990, it took some gearing up for.

Also, because of the nature of Huron county, we tend to perform according to the time lines that Bill 163 lays out in any event. We don't see a lot of the details as adding much work to what we do in Huron, mainly because we have a lot of the delegated authorities and we've had an official plan since 1971 and we have a planning department with several professional planners. So I think we're in a situation not unlike a region, although, quite frankly, we plan much better than the regions do.

**Mr Eddy:** Some don't plan.

**Mr Davidson:** No. Not Durham, especially Durham.

We've been adapting to the changes, and a lot of the changes, as I'm quite sure the ministry have told you, in Bill 163 have been anticipated for some time, and a lot of planning departments and municipalities have been planning in an environmentally friendly, if you want to use that term, or sustainable way for some time. So a lot of the changes and policies that come forward are quite common to those counties.

**The Chair:** If you wanted to ask one more brief question, then it's possible.

**Ms Haeck:** A quick one.

**The Chair:** But not long.

**Ms Haeck:** No, I promise not to be long.

One of the concerns of residents has been around notice and trying to make sure that as many people hear about a particular situation, and I would just like to hear your comments on how in Huron you manage to sort of get people really involved in the process.

**Mr Davidson:** We basically use a community development approach to planning. We invest an awful lot of effort into informing the community, holding meetings. Although the Planning Act requires one public meeting, when we do official plans, for example, it's not uncommon to hold 15 or 20 public meetings, and we actively encourage our public to participate. The councils of the local municipalities have been very supportive in local public participation and that's how our process works.

Whether it's one meeting or three meetings, Huron has always had multiple meetings when it does official plans. Our approach is that if people agree to do things cooperatively you'll get farther than if people are required to do things.

**Ms Haeck:** Great. Thank you very much.

**The Chair:** Mr Eddy, did you want to make a comment?

**Mr Eddy:** It was to the ministry, a question. I thought automatically that every upper tier, because of the new act, would be required—I guess every municipality has an official plan—would probably be required to have a new official plan based on the new provincial policies. From what I'm hearing today, that isn't necessarily so, but isn't that going to be the result? I don't know whether the ministry is in a position to comment on that now, but that was my automatic thinking.

**Mr McKinstry:** There's no requirement in the act that municipalities bring their official plans into conformity with the policy statements. However, in making decisions, and that will be in subdivisions or in consents if it's a zoning, they have to be consistent with the policy statements.

**The Chair:** Thank you very much, Mr Gibson and Mr Davidson, for your presentation today and for taking the time to come.

1400

#### COUNTY OF WELLINGTON

**The Chair:** We invite the county of Wellington, Warden Catherine Keleher, Mr James Andrews and Mr Gary Cousins.

**Ms Catherine Keleher:** Thank you, Mr Chair. I'm Catherine Keleher. I'm the warden of the county of Wellington and I'd like to introduce the two gentlemen with me. On my left is our chief administrative officer, Jim Andrews, and to my right is our county planning director, Gary Gousins, whom I think you've heard earlier.

I am particularly grateful for the opportunity to address the committee today and I thank you for this allocation of time. You all, I believe, have a copy of our submission, and since you haven't had the opportunity, I'll just take a few minutes to read it to you.

At the back of this submission is a copy of a letter and council report that I sent to the Minister of Municipal Affairs. It was endorsed by two thirds of the 21 municipalities within the county of Wellington and there has been no municipality opposed to it. As I'm sure those of you with experience in local government, lower tier, will remember, some just receive it and file it and that's the end of it, but no one has been opposed. The report



expresses the initial shock and anger—and I don't think these terms are too strong—felt by county council on seeing the contents of Bill 163 and the planning reform package.

Wellington county council believes that as much as possible decision-making should be clearly in the hands of elected and accountable officials at both the provincial and municipal levels and that decisions should be made from the point of view of the community and the advice we receive from our respective staffs.

We're finding, however, that increasingly decision-making authority in all areas affecting municipal government is being placed in the hands of special-purpose bodies and provincial civil servants. As examples of that we would cite multiservice agencies, some aspects of police service boards, district health councils, conservation authorities—there are a number. Our ability to apply discretion and common sense to the many day-to-day concerns of our citizens is constantly being diminished. Bill 163 follows this unacceptable practice.

We recognize and accept the need for the province to set out its objectives related to land use planning and the need to that ensure provincial directions are followed. What we need is for provincially elected officials to understand that municipal government has objectives related to community planning that are based on our extensive contact with our citizens, and we need the means to achieve our objectives as well. The system must provide us with the flexibility to make locally appropriate decisions that respect provincial concerns as well as the concerns of individuals and the community at large. This requires trust in municipal government, which we feel is missing in Bill 163.

I'll tell you a little bit about Wellington county. We have 21 municipalities, 75,000 people. We are close to a number of large urban centres, Toronto, Hamilton, Guelph, Cambridge, Kitchener, Waterloo, and I note this says Orangeville, but that's all right. In some areas of our county we are experiencing pressures of growth because of our location. Other areas of our county are more traditionally rural.

We've had a planning department for 20 years. We have received approval for our county official plan and we are the approval authority for all severances within our county. All of our 21 local municipalities have had official plans and zoning bylaws for over 20 years and 16 of them have adopted new official plans in the 1990s. Many of the rest either have or are about to prepare new zoning bylaws.

If you were to examine our planning documents, you'd see a strong commitment to resource and environmental protection. This commitment stems from the views of our citizens which is the real strength of the commitment.

Wellington county and its municipalities have a long tradition of planning and have demonstrated a commitment to sound environmental policy. We find it difficult to understand why the province finds it necessary to diminish our ability to plan by establishing an overly intrusive set of provincial policies; limiting our ability to apply discretion where needed, by requiring blind obedience to provincial policy; setting up an extensive set of

regulations and guidelines to accompany the legislation that will further define what we can and cannot do; and dramatically broadening the power of provincial civil servants to veto the decisions of elected local government without an Ontario Municipal Board hearing, and I think this is a very, very critical point.

Wellington county also finds it difficult to understand the unequal treatment given to regions and counties under Bill 163. Regions are being assigned the authority to approve amendments to local official plans and to approve plans of subdivision. Counties are being required to plan but are not being offered these approval powers.

We understand not all counties have been involved in planning. Many don't have the staff resources. Bill 163 should provide those counties that are actively involved in planning with the same approval function as regions. That would provide an incentive for other counties to plan by offering approval authorities once they're involved. However, should they choose not to, that would be a matter for local decision-making.

I've seen the amendments proposed by both AMO and the county planning directors which link the preparation of a county official plan to the authority to approve both local plans and plans of subdivision. Those proposals place counties on an equal footing with regions and they would be acceptable to Wellington county council.

Wellington county council is also concerned about the proposals for municipal planning authorities which would have the potential of creating yet another layer of planning jurisdiction within our county. We understand that MPAs were intended for those counties that were not actively involved in county-level planning. The legislation, however, allows them in all counties, including those like Wellington which do plan.

We would ask that these unnecessary and potentially disruptive planning bodies not be allowed in counties which are planning, and we would accept the proposals made by either AMO or the county planning directors.

Some of the problems we foresee with MPAs are an added level of bureaucracy with its attendant human resources cost and other costs, an accountability problem where they're not elected, they are not really accountable to anybody, a problem of fragmentation and the effect upon the county levy.

Wellington county council takes great offence to section 10, subsection 17(29) of Bill 163, which gives the approval authority, usually provincial staff, the ability to veto the decisions of elected local government without appeal. This section is far broader than the current legislation and allows provincial staff to make final decisions without being accountable for those decisions.

We all know that in theory provincial staff is answerable to the minister. However, in practice I'm quite sure the minister doesn't have either the time or the resources to become intimately familiar with each separate document that is dealt with by his department. So it's theoretical accountability rather than practical which occurs more at the county and lower-tier level.

Subsection 17(38) confers exactly the same powers on the OMB to dismiss municipal decision without a hear-

ing. We can reluctantly accept the OMB having these powers as they are perceived to be impartial. We see no need for provincial staff to also exercise the same powers as the OMB, particularly where matters concern a provincial interest and staff cannot act impartially. It seems that democratic rights are being trampled to achieve administrative convenience.

I would like to make the following recommendations to you on behalf of Wellington county council:

Provide municipal government with discretion to make locally appropriate decisions within a broad provincial policy framework by (a) deleting subsection 6(2) of Bill 163, which requires municipal decisions to "be consistent with" provincial policy, and leave the current provision to "have regard for" provincial policy in place and (b) require the provincial policy statement to be reviewed in the near future.

Give counties with official plans the same authority as regions to approve local official plans and subdivisions by amending sections 10 and 28 as proposed by both AMO and the county planning directors.

Eliminate the potential for municipal planning authorities in counties with official plans by amending section 18 as proposed by either AMO or the county planning directors.

Delete section 8, subsection 14.3(5) and section 40, subsection 69.2(1), which both intrude into matters of county finance.

Delete section 10, subsection 17(29) or exempt municipal government from this section, which allows provincial staff to veto the decisions of elected local government.

The last page of our submission is just a little appendix that is the report that actually went to county council, was debated and adopted, and I think it outlines our concerns pretty concisely. In closing, I would like to again thank the committee for allowing us the opportunity to make this presentation.

1410

**Mr McLean:** I guess the veto that you talk about with regard to the ministry staff, it appears that they can veto any decision that an elected official makes. That's on page 5. Do you really feel that that is the case, that they are vetoing decisions that the local county has made?

**Ms Keleher:** Looking at the proposed legislation on page 15, the approval authority may refuse to refer all or part of the proposed decision to the municipal board. It's pretty clear if the request now is not made in good faith, is frivolous or vexatious or only for the purpose of delay. We all have problems with applications that fit those criteria now and we can all relate to that. However, the Ontario Municipal Board currently has that same authority to dismiss any application.

What we have a problem with is the part that says "if the plan or part of the plan is premature." Now "premature" is a pretty vague word and open to a pretty broad definition, depending on which provincial official is looking at it. If the reasons do not disclose any apparent land use planning ground which could be approved or refused by the municipal board, I guess what we're saying is in that case let the municipal board deal with it.

They're an impartial authority with no axe to grind.

**Mr McLean:** The power that you're looking for for the local municipalities is to be able to approve subdivisions and land designations without going to the ministry. Is that the resolution that was passed by AMO?

**Ms Keleher:** Now, you've got me a little bit. I'd have to do a bit of homework here. Maybe Mr Cousins can give me a quick yes or no.

**Mr Gary Cousins:** Yes.

**Ms Keleher:** Yes. Thank you.

**Mr McLean:** The preparation of a county official plan to the authority to approve both local official plans and plans of subdivisions, you indicate these proposals place the county on a—that you want them to be on the same footing as the regions.

**Ms Keleher:** In that respect, yes.

**Mr McLean:** The regions now, are most of them given the power by the minister to do their own subdivisions and approvals?

**Ms Keleher:** Yes. Now I'm not sure about Peel and York. They may be coming up when they have their plans approved, but yes.

**Mr McLean:** Maybe I could ask the parliamentary assistant how many of those regions do not have that power now.

**Mr Hayes:** Peel and York, isn't it?

**Mr McLean:** I'll refer it over, thank you.

**Mr McKinstry:** Sorry, could you repeat the question?

**Mr McLean:** The power to be able to approve of local planning is designated to the region by the minister. How many regions do not have that power now?

**Mr McKinstry:** I'm not sure exactly, but there are only two or three regions, I think, that have the power to approve local official plan amendments at this point.

**Mr McLean:** Are there any counties that have that power at the present time?

**Mr McKinstry:** I'm going to ask my colleague to answer that question.

**Ms Pat Boeckner:** Just back on the regions, the only regions that do not have that ability now are York and Peel—they will have that ability when their official plans are approved—and the region of Haldimand-Norfolk, which we heard was a situation because they don't have single-tier plans now so they don't have that ability anyway.

**Mr McLean:** Are there any counties that have it?

**Ms Keleher:** Not to my knowledge.

**Ms Boeckner:** I can get back to you in about two minutes on that.

**Mr McLean:** Are there any counties that are anticipating being able to do it? Maybe you could get back to me on that.

**Ms Boeckner:** We certainly anticipate that there would be many counties that would be able to do official plans locally because they have an official plan.

**Mr McLean:** Okay, what's my next question? Are there many hamlets within Wellington county?



**Ms Boeckner:** We have a lot of hamlets, yes.

**Mr McLean:** And they're going to come under the agricultural policy? There would be no expansion within those hamlets?

*Interjection.*

**Mr McLean:** No, we didn't get it straightened out this morning.

**Mr Cousins:** There are a lot of hamlets within the agricultural community of Wellington and it will be difficult to expand those hamlets. I think it's possible. A good deal of the difficulty is that the things that are going to be directed to hamlets are things that are hard to integrate into hamlets, as I think the Norfolk people were saying earlier.

Most of the traditional hamlets in Wellington are small clusters of housing, maybe grouped around a school or a ball field or something along that nature. To try to put agribusiness or to try to put municipal garages or those sorts of facilities into those hamlets is going to be a very difficult thing, if you're familiar with their nature.

**Mr McLean:** I agree with you. The member for Durham there doesn't think it's a good question, but I think it's very importance because there are an awful lot of hamlets in this province that, in my estimation, are going to be frozen under this bill.

**Ms Haeck:** I want to address actually your point 5 about your feeling, the veto of decisions, especially where a particular application is premature. At the technical briefing that we had publicly at an open meeting on Monday, Dale Martin, the provincial facilitator, outlined—and I don't know that I have the document handy; space is at a premium here—the whole process of developing a complete application so that if you do not have a complete application, then you're not going to be allowed to go through the system.

If I could speak on behalf of my residents, those people who are in St Catharines-Brock, they feel that one thing that has happened with far too much frequency is that a developer has put forth an idea, a few site plans, and over the time of negotiation with the municipality, that particular plan has gone through many stages and in fact never looks the same as what the people were reacting to at the beginning as to what it ends up looking like. In fact in one instance you have something that's gone from 40 units to anything over to 130 units, back down to 106 units in size and configuration.

Even the commenting agencies from the province have very little idea of what in fact they're reacting to, because the project on the part of the developer keeps changing. My residents very clearly have indicated support for the idea of a complete application and definitely a lot of input on the part of the residents, so that they fully understand and appreciate what they may be living with for a very long time.

**Ms Keleher:** Is that a question?

**Ms Haeck:** You may comment on it, if you wish.

**Ms Keleher:** I know that I'm fortunate to live in the county of Wellington, but it's been my experience within the county that we haven't had major problems in that area because each of our 21 local municipalities appears

to be very concerned with working at it until you get it right before you go to the public, before you cause a big stir.

We're very small communities and we meet these people on the streets and in church and at the ball diamond every day of our lives and we don't want a big kerfuffle. We try with our staff to work with developers until we have something that we genuinely believe is going to be acceptable to the majority of our residents; then it can be fine-tuned. So I can't personally relate to what you're telling me.

1420

**Ms Haeck:** But I have to say to you that from what I've seen, and I know that other people on this panel would probably be able to corroborate my statement, and what I'm talking about is the development that is occurring in a community of 13,000 people; it's not a major urban centre. I'm quite sure that there are many instances of this and it's one of those problems where you may be doing it right but somebody else is doing it wrong, and it's always the question of how do you end up dealing with it so that everybody's doing it right.

**Ms Keleher:** Possibly this discussion is illustrative of the fact that one size does not fit all and what works—

**Ms Haeck:** I think there's a certain flexibility here anyway. I mean, the urban reality that I deal with in St Catharines and the rural reality that I deal with in Niagara-on-the-Lake provide some very interesting instances of how Niagara-on-the-Lake can definitely get things wrong and occasionally St Catharines can get it right.

**Ms Keleher:** I guess we just have trouble with appointed officials vetoing the decisions of elected representatives. The OMB we can live with. As I say, it is perceived to be an independent, impartial body. But the philosophy is what I think we have trouble with.

**Ms Haeck:** I'll defer to my other colleagues.

**Mr Wiseman:** On your last point about elected officials having the final say, one of the things that has struck me as interesting is in the Durham region official plan, which has just been okayed, they held a public meeting and then the official plan went to the council and the council rewrote it on the floor of the council chambers, and it did not reflect anything that happened in the public meeting, or very little of what happened in the public meeting and very little of what was in the original plan. This becomes a real aggravation for residents who participate in the process, only to see that it's not what they were commenting on and then not to have it come back to them to comment on what has now appeared in it.

I think there's a fine balance there between being elected and also representing the constituents. What I hear on a regular basis from constituents where I come from, where the population used to be 26,000, 10 years ago, and now it's 60,000, is that too much of that happens. How do we balance these conflicting jurisdictions?

**Ms Keleher:** Again, the OMB is one resource. It's very difficult to formulate policies that apply across the board.

**Mr Wiseman:** Yes, but most of the things that were thrown in are now before the Ontario Municipal Board.

**Ms Keleher:** Yes, and perhaps that's appropriate.

**Mr Wiseman:** I guess the question is, how do you then come back to people and include them in the process so that they don't become jaded with the system as it exists?

**Ms Keleher:** I don't know if there's a way, other than November 14th.

**The Chair:** Mr Hayes, do you have a point of clarification perhaps?

**Mr Hayes:** Yes, thank you, Mr Chair. On your number 5, your concern, Warden Keleher, I think we all have the tendency to point the finger at staff and point the finger at bureaucrats. All politicians periodically do that. But just to clarify that, it's not really the staff who are the ones who do the vetoing; it's the minister who has that authority and it's the minister if a plan is not complete or does not meet certain criteria.

But one question I'd like to ask is I understand that when the minister signed Wellington county's official plan, it was with the understanding that the official plan was somewhat deficient at that particular time and that it would have to be strengthened. The warden at that time and the minister signed an agreement which said that the county would do certain things within four years, and one of them was growth management work and of course environmental policies. I'm just wondering, has that been resolved at this time?

**Mr Cousins:** If I could answer that, Mr Chairman, what we did, when our official plan was approved, the province said there were certain areas that it wasn't comfortable with and it wanted us to review and deal with in more detail, and county council has agreed to undertake that. In fact they've given the department instructions to look at specific areas this year, and we hope to have an amendment prepared this fall for public meetings.

But what has caused some problems for us in doing that is that the province has totally revamped the provincial policy structure. What you wanted us to look at was largely issues relating to growth and settlement, and we haven't, quite frankly, known how to draft our policy to revise our plan because the provincial policy statements really haven't come forward in their new form until just the last month or so. In fact they're probably still under some consideration, and until we know how the dust is finally going to settle in the province, it's been difficult to do.

**Mr Eddy:** Just following on with that OMB and allowing the OMB to make the veto, were you aware that the present policy of the OMB, in my experience, is that they won't make the decision to dismiss an appeal unless the local council takes that action first? I was quite surprised at that, but that in fact is the way it is.

Thank you for the helpful brief and the points you've made. You've said many of the things that other county representatives have, including the discrimination against county, so to speak, treating them differently to regions, and that can be dealt with, I hope.

The serious thing, though, from my point of view is this matter of having municipalities opt out or form planning areas, and it seems to me now that perhaps the ministry wants to provide for the separated municipalities to plan in some way jointly with their municipalities, but that would be disastrous, as has been pointed out by some other counties, to the county planning operation if they were to leave the county. I don't know that that was intended, so I think we need some clarification of that.

I'm looking at a safeguard, and it seems to me a safeguard might be, and I'd like your opinion on this, that a municipality could have joint planning but only withdraw from a county planning organization or planning setup where you're proceeding to get an official plan with the consent of the county council. I don't know whether the ministry would approve of that.

The other point that I'd like you to comment on is 1(b) on page 6 where you said "require the provincial policy statement to be reviewed in the near future." Are you saying that the policies that are attached to this should be circulated for review and comment and possibly be revised and amended before this act is passed? What is your point there? I personally would like to see that because it has come up that the policy statements themselves are not open to or have not been examined, and we've had some people bring in some perceived problems with them.

**Mr McLean:** They're approved by cabinet.

**Mr Eddy:** Approved by cabinet did you say?

**Mr McLean:** That's what I said, yes.

**Mr Eddy:** Do you see that being adequate enough doing it after the act is passed, or what is your point there, and comment on the other one about withdrawal.

**Ms Keleher:** We would prefer, of course, that they would be reviewed as soon as possible. It's our understanding they're not part of the mandate of this committee or their review is not part of the mandate of this committee, yet they're so closely tied to the legislation that it would be great to have them reviewed before it's passed.

**Mr Eddy:** For possible correction.

**Ms Keleher:** Sure.

**Mr Eddy:** With a view to improvement.

**Ms Keleher:** None of us is perfect.

**Mr Eddy:** I realize that.

**Ms Keleher:** Including myself, the authors of the document, yes. With respect to withdrawing, we think it's going to cause fragmentation. We would support the position that you outline where in a county that already does plan, which has a professional planning department and is prepared to undertake that function, MPAs would be formed only with the consent of the county council.

#### 1430

For counties that do not plan, they certainly make eminent good sense, but they're going to fragment our county, they're going to cause dissension. We happen to have a county library system in which some of our municipalities have not yet been included, and we recognize the difficulties of that and we're not anxious to



see it expand. We want to consolidate and form a strong county government.

**Mr Grandmaître:** One short question?

**The Chair:** It's 2:30. If it's quick.

**Mr Grandmaître:** Have you received an answer for your June 29 letter of this year?

**Ms Keleher:** Not that I'm aware of. That hasn't crossed my desk, no.

**Mr Grandmaître:** It's only September.

**The Chair:** We ran out of time.

We appreciate your taking the time to participate in these hearings. We thank you.

WELLINGTON COUNTY  
CLERKS AND TREASURERS ASSOCIATION

**The Chair:** We welcome Wellington County Clerks and Treasurers Association, Mr James Andrews and Mr Robert Skeoch.

**Mr Robert Skeoch:** First of all, I'd like to thank you for entertaining me this afternoon on behalf of the clerks and treasurers of Wellington county.

As mentioned before, there are 21 municipalities within the county. Our association includes not only the municipalities but also the county of Wellington and the city of Guelph as a separated city.

To go through the report, rather than reading it right through, I'll very briefly hit the highlights. I'll start at page 2. We've split the report into three separate areas. The first area covers the Planning Act.

The first point is we do strongly support the comments and recommendations of the county of Wellington that you've just heard. If the county gets approval for giving authority of the official plan approvals and subdivision approvals, we feel it will definitely speed up the system, and I think this was the idea of Bill 163 to start with.

The second point is we also agree that the words "shall have regard to policy statements" should be included in subsection 6(5) on page 5 of the bill.

Item 3 deals with time framing of official plan amendments. At the present time that section not only asks for 15 days to send out the notice of the passage of the amendment, but also requires that everyone gets a copy of all the information. We find the time frame is just too short, and also it's going to be very expensive, because it's not only the official plan that has to be photostatted, there's also a lot of documentation that goes along with the official plan to approval authority which can be very costly.

What we're suggesting is that only the written notice of the adoption of the plan be sent to each person of the public that requires a copy of same and that any person could come to the municipal office to review it if they so wished during normal office hours. It would be consistent with the present Planning Act that's in effect right now.

Item 4: We're suggesting a little clarification on the word "request." This could mean verbal request or some other type of request that may not allow the council to have all the information they need to make a proper decision. So we're suggesting that it be changed to "written request in a prescribed form acceptable to

council." As you know, every municipality is a different size and has different concerns or maybe has different application forms. I think using this type of wording will cover all municipalities.

Item 5 gets into the committee of adjustments. Under the act it talks about appointing an officer to carry out the provisions of the committee of adjustment, but there's nothing under section 45 or 45.1 to govern the duties or responsibilities of the officer. It talks about how they can hold a hearing, but it doesn't go further on to include it under the regulations of a committee, it doesn't say what they're supposed to do with it. So something has to be done with that.

Item 6: We request that if the appeals of the committee are going to go to council, then we feel there should be a copy of the decision of the committee of adjustment going to the local clerk. As you may not be aware, in a lot of the smaller municipalities the clerk is not the secretary of the committee of adjustment. They appoint their own person to act in that behalf.

Therefore, I think if the council is going to make the decision on any reviews, they should automatically get a copy, plus the fact that a lot of people contact the local municipal office for information about the decision of the committee and I think it's important that the local municipality should have at least a copy of it.

Item 7: This talks about the time for the council to review a request on the decision. There is nothing in the act or in Bill 163 that will set out a date for review of the decision. So for political reasons or other reasons, council may delay the review of the decision indefinitely. They may never handle it.

We're suggesting that there should be some type of time frame incorporated in Bill 163 to force the councils to make some type of decision one way or another. Also, you get into the problem of, of course, elections and various things happening. So we're suggesting maybe 180 days from the time the decision's made.

Item 8, which is on page 4: We're asking that this section be clarified. It's dealing with subdivisions' authority. We're suggesting it should be clarified as it's unclear whose responsibility it will be to give that specific notice that's required under that section.

There are other minor concerns which are also attached to the back of the report. I'll leave that to you to review on your own later.

Going through the amendments to the Municipal Act, we have concerns there too.

Section 47: Most municipalities already have a procedure bylaw in force. The act doesn't really indicate what happens to these existing procedure bylaws. Do they stay in force or can they be amended or do the municipalities have to pass a new procedure bylaw? Secondly, would municipalities be able to adopt the bylaw that would apply to council and to all the local boards under their jurisdiction? In other words, actually pass one bylaw instead of several. We would like this section clarified.

Item 2, section 51: It deals with the procedures for purchase and sale of property. It's not clear if this bylaw should be part of a procedure bylaw. Some municipalities

already have in the procedure bylaw certain criteria dealing with selling of property and the purchasing of property. Bill 163 is not clear on this matter.

Item 3, section 55: We feel to adopt a procedure bylaw at the smaller municipalities it may not be a long enough time period. Small municipalities usually meet only once a month and they may not have the staff or the expertise to prepare such a document. In turn they may turn to their local solicitor and, if you know municipal solicitors, sometimes they take a little while to get the information back and adjust it to council's preference. We are suggesting maybe six months would be more acceptable.

On page 5, item 4, again we're asking for a little clarification. Would the municipality be allowed to continue to use the existing bylaw in force rather than adopt a new bylaw?

Going on to local government disclosure of interest, item 1, clause 3(m): We would like to have some clarification of what is "remote or insignificant" in its nature. This may be something different to each member of council compared to the public or a commissioner that is going to review. Therefore, the councillor could possibly end up losing his position, even though he or she thought they may have complied with the section of the act. We're suggesting that this section either be deleted or reworded.

Item 2, clause 4(1)(e): We're suggesting that this should be deleted as we feel that the member has already given his oral disclosure and has been already recorded in the minutes by the clerk. If there is any further discussion, if there's a concern from the public, we feel that they can always apply to the commissioner for additional information or maybe contact the individual himself.

1440

Item 3, subsection 4(2): We're suggesting this subsection be deleted. Our understanding of the purpose of changing the present procedure was to get the member to leave the council chambers to avoid swaying any decision of the members remaining. Declaring a pecuniary interest should be done only when the member is present at the meetings when the issue to be discussed is part of the agenda.

To follow up through there, the other concern is what happens with the approval of the minutes at the following meeting. If you're having these people leave the council meeting, they won't be able to endorse that section of the meeting.

Item 4, subsection 6(2): Some members of council at the local level of government are also members of the second-tier government, such as the county of Wellington. It doesn't really indicate, are they to file disclosure statements at both levels of government, both at the municipal level and the county level? We would like some clarification on that.

We're also suggesting that all candidates should file this disclosure as a condition of running for office when they register under the Election Act. This way both the existing council members and the new candidates are treated equally. Otherwise new candidates may have an advantage over the former council as the former council

will have filed their declaration, where the new candidates will not.

Also, submitting information prior to the election could possibly eliminate the calling of a new election and save the municipality thousands of dollars. As you know, municipalities have been cut back in spending and we just don't have the money to throw away on new elections. Hopefully, with all candidates filing the same information prior to election, any member of the public can deal with them and ask questions prior to the election rather than after.

Item 5 on page 6, subsection 6(3): Some members of council may be separated from their spouse or may have a court order to stay away from their spouse. Therefore, the financial information of the spouse may be impossible to obtain. Secondly, the child could be under the custody of the spouse or the member may have children from a previous marriage. How does the member obtain the financial information?

Financial information for both the spouse and child we feel should not be disclosed. This would prevent any problems with filing of statements, and all members will be treated equally: members of council, that is.

Item 6, clause 6(3)(b): At what point or in whose opinion is the possibility of serious harm to a person or business determined? A councillor could argue that a mortgage against any of his property could be a harm to his business. In fact that was one question that was brought up by one of the candidates for this election coming. He has several parcels of property and he has a mortgage on a few of them and he feels that this could hurt him if people knew that he was maybe not as financially solvent as he anticipates.

Going on to page 7, item 7, subsections 6(5) and (6), the wording is very confusing and we're suggesting that these be either deleted or clarified. That's dealing with the spouse and child information.

Item 8, section 15, should be deleted or at least reworded under subsections 15(3) and (4). We're suggesting all documents, and especially the disclosure documents, should not be available to the public. As you know, Bob Rae has already found that private information should in some cases remain private; therefore, we're suggesting that any person requesting to access the information should follow the procedures already set out under the municipal freedom of information act or be part of section 8 of Bill 163, which deals with the commission, how the commission can go in and do any analysis of the information and make a decision from that.

This way the member has the same privacy as members of the provincial government and will protect any information that may be disclosed by a member in error. If the members are aware that disclosure and documents are not going to be available to the public, they would be more open about the information they give. Otherwise, it will be a lawyer's nightmare. In other words, they'll be going to their lawyers first before they'll be filing any declarations. The way the act is written right now, we've talked to a couple of lawyers and both of them have different opinions on certain sections of the act, and it's not good. Also, this will prevent the information about



the spouse or child being misused by the public.

Item 9, sections 19 and 21: There should be different amounts set for different sizes of municipalities. Will the municipality or board bylaw have jurisdiction over the Lieutenant Governor in Council regulations? In past experience we've seen that the Lieutenant Governor in Council regulations usually take one or two years to come into effect. If the public have accepted the suggested municipal or board bylaw, why would it need to be changed when these regulations do come into effect?

Finally, on page 8 is number 10. Because of the time restraint, I wish to advise you that there are additional items in the appendix attached that you can peruse at your leisure. I'd like to thank the committee for letting me speak.

**The Chair:** Thank you. Ms Harrington first. Four minutes per caucus.

**Ms Harrington:** Thank you, Mr Skeoch, for coming forward today. I wanted to deal with the section of the act with regard to planning. Obviously we're all here today as part of a process to make planning better in Ontario. I see it as trying to make it more efficient, therefore cut red tape, as well as make it more participatory for the general public and have them more part of the process, as well as adhere to common principles across this province which I think are very important.

We've heard this morning that the general public is feeling isolated. This is from a man representing Municipal World. We also heard from groups that there should be more accessibility and timeliness in order to make this whole planning process fair. Whether it's a committee of adjustment decision or whether it's a planning matter or the official plan, it's essential that people do have their input.

I see clerks across this province as a key part of that process. In any municipality the clerks are the ones who give out the information and allow people access. You say on page 2 that the association suggests that only a written notice of adoption of the plan be sent to each person or public body that files with the clerk a written request. What I'm asking you is, can you see way through your job as clerks across this province to have more public input, to have a new and better way for people to be involved in a very important process?

**Mr Skeoch:** At the present time the system is that before any adoption of official plan or amendment to official plan takes place, of course there are public meetings. The system itself I think seems to work in most cases.

I know in Wellington county we haven't had any major problems that I'm aware of, but our concern wasn't really—we still think, you know, the public should have their input, we're not saying they shouldn't; our concern is the time frame for actually getting those notices to the public. If we're going to have to start photostating all the documentation that goes to the approval authority and give it to everybody that asks for a request or any public body that requests it, that's fine, but 15 days is impossible. There's no way we can reach that time date.

**Ms Harrington:** What do you think of advisory

committees like the EEAC committees? Do you find it helpful to be able to deal with them, to communicate with them? That's your job, communication.

**Mr Skeoch:** I guess it depends on the municipality. I come from a very small one, and it depends I guess on the topic that you're dealing with, whether it's, like, what the situation is with the official plan, whether it's dealing on a county-wide plan that you're dealing with or whether it's dealing with a local issue, a minor issue. It varies, it depends on what frame of municipality you're in.

1450

**Mr James Andrews:** I think maybe Bob has touched on one of the problems. I'm at the upper-tier level, so at this point in time—and I'm with the county—we're not directly involved. But I was for many years with the city of Guelph. Certainly when you've a larger municipality probably an advisory committee has value. It has value as far as you being able to tap into certain expertise in the community.

But when you're in a municipality—I just forget the population but Bob's is somewhat small—it may be quite as advantageous or even necessary, because of the size of the community. I think this is one of the problems that probably you're having to deal with at the provincial level, that we're not all around metropolitan or regional centres. There are a lot of municipalities that are very, very small. The shoe doesn't always fit every foot. This is one of the points that I would like to get across to this committee when you're dealing with this.

**Ms Harrington:** I think there should be various ways, whether it's a small municipality or a large or whatever, to have people involved and I think clerks are part of that.

**Mr Winninger:** Just a very quick question. Some of your concerns you expressed around conflict-of-interest disclosure reflected some discussions we had this morning. We had some clarification from the ministry on the kind of information that would or would not be made public. I heard you refer to the concern of a particular interest who had mortgages on certain properties and, if that became public, it might have an adverse impact on his business. I wonder if we could have a clarification from the ministry as to whether specific mortgages on specific properties would be required as part of the disclosure or not, and could be made public.

**Mr Sidebottom:** The precise items to be disclosed by a member will be set out in regulation. We sent out a draft regulation in May. It says liabilities that are related to particular assets, and those assets include property holdings. Similar to the members of the Legislature, as the public part of your disclosure as a member of the Legislature, it would simply say you have a property at a particular address and you also have a mortgage with a particular institution or other lending agency at that same address. There'd be no indication of the value or the extent to which it's mortgaged—

**Mr Winninger:** But would it relate the mortgage to a specific property?

**Mr Sidebottom:** Yes.

**Mr Andrews:** I did see the sample form that went out. Quite frankly, we weren't too concerned if we could be assured that it would be fairly restrictive like that. But we have a very specific instance that sort of precipitated this comment, where a businessman would've been concerned if the information was available. There was a notice of substantial change in that information over a fair period of time. He was in the type of business where somebody could probably buy business, which would put him in hardship, just the fact that that knowledge is readily available.

What we would not argue against is not so much having the information available, but how it's to be released. As we interpret this early stage, it would appear almost that there's a book available through the clerk that anybody can walk in and flip through. What's the reason? If it was centred through a commission or some restrictive manner where they have to justify this information being available—which I understand is what happens at the province; I've been told that anyway—I don't think that you would have the objection.

It also, particularly in smaller municipalities I think, puts the clerk in a rather precarious position politically because he could be perceived as providing this information in a small community. As a staff member I would have real concerns with it.

**Mr Eddy:** Thank you for your presentation. You've come up with some suggestions on many items that need review and consideration and I hope that's done. Thank you for doing that.

Item 5 on page 3: I had thought that when you appointed officers under that section automatically they would proceed the same as the committee would. I didn't realize that it wasn't really defined. You're saying it's not defined in the new act, so it needs a definition. I think that's an awfully good point.

I want to follow up on that point of the mortgage. You know, it's interesting because as soon as you know that a person owns a certain property you can easily, at least you could, go into the registry office and check the property and find out the amount of the mortgage, to whom it's owed and all the details. If you have an idea that somebody owns a property, you can already get that. Yet on the other hand, you are giving information. It's easily obtainable, in my opinion anyway. I don't know that there needs to be much of a concern about the one on mortgages because it's already, as I say, obtainable unless that act is going to be changed.

The point you raised about farming statements at both levels, I need a clarification on that. I guess you would have to file at both levels. If you were a locally elected council who sits on an upper tier, then you would have to file that information with both clerks. Is that correct? I would think so.

**Mr Sidebottom:** The way the legislation is drafted you would file it with every body that's listed. So if you were a member of a township council and also served at the county level, then also on perhaps the PUC, you'd file the same document in each place.

**Mr Eddy:** Hopefully the same document.

**Mr Sidebottom:** Hopefully the same document.

**Mr Eddy:** I see. I've had several people contact me and the big problem is: "I have an appointment to the police services board of the town. We've reduced our recompense to \$100. You want to know all this about me." They seem to be very concerned about it. Personally, you know, the detail that we have to file—when you have to ask your wife how much money she's carrying in her purse and do it nicely enough that you can get an answer, it seems to me that it's beyond reason. This is light in comparison.

*Interjection.*

**Mr Eddy:** Well, I have gotten it so far. But I want to just comment too on the matter, and it's a very, very important point, of public information. I think you've hit it on the head. In a small municipality people tend to know what's going on and make it their business to know what's going on. But when you get a municipality like the town of Haldimand, which is an amalgamation of one town, two villages, several small police villages and six or seven townships, you've got a problem. I think that's what the people from Norfolk naturalists were saying, which covered the old county of Norfolk, that it's almost impossible.

I don't know what system can be devised in rural areas where you have a weekly newspaper. Small signs are used, but it's an item that really needs to be looked at. I agree with that. People have got to know what's going on, because if they don't know initially, they're going to do something about it later on and cause problems.

If you have any suggestions along those lines—and I realize you're at the local level, Mr Andrews is at the county level, and it's quite a different thing when you're covering the whole county perhaps—but if you want to respond, you may.

**Mr Andrews:** Very briefly, I think that if there were any safeguards that could be developed that would prevent sort of witch-hunts—you mentioned mortgages and so on. But somebody again has to go to the registry office, they have to know the lot and the plan, so that they have specific information. What I'm afraid of is that you're putting the clerk in the position of dropping a book on the counter and saying, "Go and look at whatever you want."

**Mr McLean:** Yes. That's exactly what will probably happen. I had the opportunity last night in my spare time to review my financial bill that I got from the commissioner.

**Mr Jackson:** That was him crying in the room next door to me. That's why I couldn't get any sleep.

**Mr McLean:** That document very clearly states that I have to show the amount of mortgages that I have, the amount of mortgages that I own, the amount of money that I have in the bank.

**Mr Wiseman:** How much you get in your pocket.

**Mr McLean:** Yes. Everything is there. I'm curious to know from the adviser if the conflict-of-interest form for members of council is much similar to the ones that the provincial members have. If it's not, what is left out of it?



**Mr Wiseman:** There's a copy of it in our package.

**Mr McLean:** I got it.

1500

**Mr Sidebottom:** The amount of detail required of a municipal council member in their disclosure of financial information is much less substantial than is required of a member of the Legislature. There is a sample copy of the form provided in your information. It's in the green pages. It's probably about a third or halfway through that section.

You'll find a copy of that form 1 and you'll see it relates to property interest, business interest, liabilities related to those and just the sources of income. So the comments you're making about the amount of money that your mortgage is worth or the amount of money you have in the bank, there are no dollar values associated with municipal disclosure.

**Mr McLean:** The reason I asked you that question was I wanted it clarified for them so that they would now realize it's not as painful as what they think it is.

**Mr Grandmaitre:** Do you have a copy of that, Al?

**Mr McLean:** Yes, I have a copy of mine in my briefcase. The time frame that you talked about is an important issue and it's been brought up with many of the people who have made delegations to us. You're talking about the time frame with regard to a small council that meets once a month. What would you like to see that extended to? Did you indicate in your brief 180 days?

**Mr Skeoch:** On which page?

**Mr McLean:** I guess 4 is where your answer is, 180 days.

**Mr Skeoch:** I would expect most municipalities could be able to make the 180-day period. That gives them approximately half a year to get in order. As I say, it depends too if it's going to be—as long as there's no political uprising or whatever—but I think for council six months should easily be able to handle it, I would hope.

**Mr McLean:** You asked a lot of good questions in your brief, especially where it comes to the separation of a spouse and family. That can be very complicated. That's the first time that's been brought to our attention, and you have some other questions in there that I would be delighted to see the answer that you get back from the ministry staff when they have time to deal with it.

**Mr Skeoch:** Very good.

**Mr McLean:** It's a good brief and thank you.

**The Chair:** Thank you for participating in these hearings.

NICHOLAS VARIAS

**The Chair:** I'll ask Mr Varias to come up. Welcome, Mr Varias. If you want the members to comment, you will have to keep your comments brief; otherwise we'll simply listen to what you have to say.

**Mr Nicholas Varias:** I understand. My presentation is brief as well. I'm an architect in London and I speak personally. Although a lot of my colleagues feel the same way as I do on the issue I would like to address, my comments are my personal comments.

As chair of the urban design committee of the London Society of Architects, I have repeatedly commented in the past on the reports of the Commission on Planning and Development Reform in Ontario. The recent package issued by the Minister of Municipal Affairs includes Bill 163 and a comprehensive set of policy statements. I understand that these incorporate to a substantial extent the recommendations of the final report of the Sewell commission. I strongly believe that these recommendations, if implemented in Bill 163, will contribute positively to the reform of the planning system in Ontario and consequently to better urban environments.

Nevertheless, I would like to address what appears to be a shortcoming of the amendments, and now I speak as an architect who feels very frustrated by looking at certain results of how our neighbourhood has been handled in the past. I can refer to many examples in London where urban design hasn't been addressed properly and we're experiencing some of the negative effects of lack of addressing urban design.

After a quick review of the policy statements and of Bill 163, I could not find any provisions for professional qualification requirements for those involved in the planning and development process. The Sewell commission's final report touches on this issue under lot creation and development control by recommending qualified planners and advisory committees with individuals with an interest in design.

Have these recommendations been omitted? I'm not sure. I didn't have the time to go in detail through all the text of the Bill 163, but after going through it, I could not find any reference that would sort of incorporate what the Sewell commission had in the final report at least.

**The Chair:** Do you want a quick response to that question that you're raising?

**Mr Varias:** I'd rather finish my reading first.

These recommendations from the Sewell commission were not reaching far enough, I believe, but they provided a good start in promoting better planning and urban design.

The goals of the policy statements, especially those involving intensification, cannot succeed without effective means to produce high-quality neighbourhoods. I could add here that that's where people will perceive planning. That's how planning is materialized in our lives at the neighbourhood level where we see the results of what kind of buildings go up and how they look, scales, how they're integrated into neighbourhoods, harmony and so on. The legislative measures proposed so far do not address urban design and professional involvement. These factors are required to successfully complete the planning and development process at the neighbourhood level.

It is time that Ontario follows the example of many other parts of the world and recognizes the fact that shaping cities is also an intellectual exercise, not only a political, economic and physical process—I would also add administrative process—an exercise that requires people with adequate training and experience in addition to public input.

In the public's interest the Planning Act should include

professional requirements for the design of healthy and safe urban environments. This would be similar to the provisions of the Building Code Act for healthy and safe buildings that require the involvement of architects and engineers. As a minimum the Planning Act should require that planning authorities include people with training and experience in planning and urban design.

**The Chair:** Thank you very much. There is time for one question each. Some questions tend to be long at times, so why don't we do that? I think it's Mr McLean.

**Mr McLean:** You want to know if the recommendations have been omitted and you're talking about the lot creation and development control by recommending qualified planners and advisory committees with an interest in design. I can't tell you whether that's been met, but I could ask the ministry staff if those qualifications are in that document.

**Mr McKinstry:** Yes, the way we worked it was the way the Sewell commission recommended, which was that where a municipality, region, city or county was advised by a professional planner, qualified planner, they would be delegated. In fact we went a little further than the commission in this case and we gave subdivisions directly to regions and separated cities and we would continue to delegate to counties.

I guess the reason we did that was because we felt that having a plan, being engaged in planning at the political level was more important than being advised by a planner. A planner could resign, the budget could be cut, many things could happen. We felt the commitment of the political entity to planning was most important.

**Mr McLean:** Any of the municipalities that I've been involved in, and I spent 16 years in municipal government, most of the planners who worked for the municipalities and the county all had schooling in urban and rural planning. I'm wondering what you were getting at when you were talking about—I don't know how anybody could hire anybody that wasn't trained in planning. Is it happening around here?

1510

**Mr Varias:** The way I see the problem is not that the planners who are presently—or who would be hired as part of staff are not qualified as planners; the question is if the decision-making process, especially when focused down at the neighbourhood level, which sort of involves urban design—if that decision-making involves people who have the experience or training and so on to make those decisions.

I can give you an example of London, which is a city of over 300,000—I think it is 316,000 at the present—there's no architect on staff. There is no input at any committee level, planning committee or the kind of level where architects would have an input into the urban design of new subdivisions. The only thing where there are architects involved is the local architectural advisory committee that has architects that deal with heritage aspects. But again, this is an advisory committee to the planning committee and has absolutely no sort of political clout in terms of making decisions.

**Mr White:** Thank you very much, Mr Varias. I'm

very impressed with your presentation. You have a very succinct point and frankly one that you do not personally, directly benefit from, and we're talking about land use planners and planners, and you're an architect. I think it really is commendable that you're saying there's a lack in our community, it affects me, but I wouldn't be involved directly.

I've certainly been approached in my area by a number of planners who say we should have requirements, we should have standards about who are planners, what kind of education and skills and training they have. They're saying that basically it's something Municipal Affairs should be involved in. Would you be in favour—this wouldn't come here. Your profession of course is, I believe, regulated by the Attorney General's office, is it not?

**Mr Grandmaitre:** No.

**Mr White:** Which ministry?

**Mr Winninger:** Attorney General.

**Mr White:** Attorney General, Thank you. Of course, you have a separate act that describes architects. Would you be in favour of those kind of regulations or laws that would specify what a land use planner is, what an urban planner is, so that this kind of work can be done in a more conscientious way?

**Mr Varias:** I may have not made my position clear. I don't dispute the qualifications or the input at the planning level, at least at the present, although a lot of smaller municipalities do not have planners on staff and I understand there will be some kind of mechanism for those municipalities. The Minister of Municipal Affairs will provide the planning support needed to implement the policies.

What I'm addressing here is the level of planning, that planners are not trained, or the planners are trained to deal with the overall planning issues of a broad nature, let's say putting together an official plan and looking at statistics and so on. What I'm addressing is if you start focusing on an official plan and you're identifying certain areas of a city, for example downtown London, or certain areas of downtown London, planners are certainly not trained to deal with that aspect. This is urban design, with different kinds of criteria for design and planning for such a thing and what I'm saying is that, at the present, this is not covered through any kind of regulation.

The building code covers buildings for safety of persons and property. The Planning Act may cover planning, a broader aspect of planning, but what is needed is to cover that intermediate level of urban design—if the Planning Act would include provisions to deal with those aspects, urban design guidelines and how those are dealt with at design level and also at political levels so they can be implemented. As an advisory committee, for example, for a municipality, I would see members on that committee who would need to have those qualifications to deal with those issues.

If these things are not included in legislation, required by an act, they are left up to the local level and in a city which is lucky to have people with vision and recognize these things, then those are addressed. If not, people



living in the municipality are less lucky. That's what I was trying to—

**The Chair:** Mr Grandmaître, quickly.

**Mr Grandmaître:** Don't you think it would be only natural for a planner or a municipal council, once the official plan has been adopted by the local municipality, once the implementation of this plan starts, that an architect would be involved? I think all municipalities do this at the present time.

**Mr Varias:** Not London. I don't know much about other—

**Mr Grandmaître:** They may not have an architect on staff, but once the implementation starts, though, I'm sure they go outside and talk to you or your colleagues.

**Mr Varias:** There is a requirement for an architect, as a professional, to design a building. But I am talking about looking at an area that involves several buildings, including existing buildings, integration of heritage areas with new proposals; new plans of subdivisions—how are they integrated. There is no such a requirement of having architects involved because nobody hires them. It's beyond the scope of a particular project. That's why the city or the municipality would have to assume that role to have some kind of mechanism, that planning for that intermediate level is done.

**Mr Grandmaître:** That's a good idea.

**The Chair:** We ran out of time, Mr Grandmaître. Mr Varias, we thank you for coming and for the brief.

#### COUNTY OF OXFORD

**The Chair:** We invite the county of Oxford, Warden Edward Down and Mr Craig Manley. Just as a reminder, please, speak into the microphone so that we can record everything you will say to us.

**Mr Ed Down:** My name is Ed Down. I'm the warden for the county of Oxford and I have with me this afternoon Craig Manley, who is the director of policy and development for the county. We certainly thank the commission for the opportunity to make a presentation on behalf of the county of Oxford.

The county of Oxford has reviewed in some detail the package of documents released in May relating to the government's reform of the planning and development system in the province. The county has reviewed the Comprehensive Set of Policy Statements, the document entitled Understanding Ontario's Planning Reform, and Bill 163.

The county recognizes that Bill 163 revises the Ontario Planning and Development Act, introduces the Local Government Disclosure of Interest Act, as well as amending the Planning Act, the Municipal Act and other statutes relating to planning and municipal matters. The content, however, of this submission relates to the Planning Act.

This submission is divided into sections, with the first section outlining some issues of particular importance to the county. The second section contains the county's comments on various provisions included in Bill 163.

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To fully appreciate our concern relating to Bill 163 and

the county of Oxford official plan, it is important to have some appreciation of the planning process in the county of Oxford. The county of Oxford has a population of approximately 93,000 people. The economic base of the three urban centres in the county—the city of Woodstock, the town of Ingersoll and the town of Tillsonburg—is focused on auto-related industry with the most significant of those industries being the CAMI plant in the town of Ingersoll. The county also has a very strong agricultural industry which is based on the fact that 91% of the land in the county is rated as class 1, 2 and 3 in the Canada Land Inventory.

The restructured county of Oxford was created in 1975 by Bill 95. Bill 95 provided for a variety of changes and responsibilities between the county and its area municipalities. The bulk of the authority for community planning was assigned to the county. The county was also given a mandate to prepare an official plan and that was done in the form of a one-tier plan which was approved by the Minister of Municipal Affairs in 1979. The planning and development department for the county was established in 1972 and, subsequent to restructuring, that department has continued to serve all eight member municipalities.

On October 1, 1977, Oxford was officially delegated subdivision approval authority and was the first county in the province to receive that delegation. Oxford received condominium approval delegation on November 1, 1980.

In May 1990, there was a decision by county council to initiate a three-year program of updating and reviewing the county official plan. That program began in the early fall of the same year and represents the first comprehensive review of the official plan since its adoption in 1979. Three years has expanded now into our fourth year, and we are presently reviewing draft policies for the updated official plan.

These series of highlights provide some background as to how community planning is conducted in the county of Oxford. The planning framework in the county may not be perfect but there is a political commitment in the framework and for the documents that form part of that framework. For these reasons, the administration of land use planning in the county of Oxford works very well.

Since the Commission on Planning and Development Reform in Ontario was established, the county has been very diligent in determining how the recommendations of the commission, and the government's response to those recommendations, would affect the county's program to revise and update the official plan. At various points over the last two and a half years the county has had considerable trepidation over how the Sewell commission and the ministry's response would potentially delay or derail the major revamping of the county official plan.

Bill 163 at least provides some certainty by acknowledging that the government is working towards a January 1, 1995, implementation for the legislation. That date becomes significant in relation to subsection 74.1(1) which refers to the transition provisions in the legislation. It is understood, however, by subsection 74.1(2) that an official plan would have to be adopted by a council for it to be considered "a matter or proceeding...deemed to

have been commenced....” Knowing the target date is an advantage but recognizing, in the case of the county of Oxford, it is unlikely to be met, causes concern about the adverse effect that the implementation of Bill 163 could have on the new official plan.

The exercise of reviewing and updating the official plan is being conducted in accordance with existing legislation and the existing policy statements of the provincial government. A major concern arises on the part of the council of the county of Oxford if the new official plan is submitted to the province for approval in early 1995 and the ministry proceeds to advise the county that new policies now apply which necessitate new research leading to the development of revised county policies.

In previous submissions, the county has put forward some suggestions to resolve this problem. The county has recommended that the ministry could go ahead and approve the official plan even if not fully “consistent with” the new policy statements. In this scenario, the approval would stipulate that the county would have a defined period of time after this approval is issued to revamp and add the necessary policies to fully ensure that the new policy statements are implemented.

This approach allows some flexibility and permits the county to carry out a secondary exercise to ensure that policies dealing with, as an example, the economic, community development and infrastructure policy statement, are formulated and incorporated into the plan.

The county of Oxford stresses the need for implementation of the proposed policy statements to be flexible and recognize the practicalities of the policy preparation work that has already been undertaken by municipalities such as Oxford. A municipality that has worked within the confines of existing policy statements and guidelines should not be penalized at the 11th hour. A municipality's plans should be given the endorsement that was anticipated all along even if there are conditions imposed on that endorsement that require further work to be completed.

As a footnote on the relationship between the county official plan and the new provincial policy statements, the county of Oxford concurs with other submissions, and especially the submission by the Association of Municipalities of Ontario, that the new Planning Act should acknowledge that an approved official plan should be deemed to be consistent with provincial policies and as such should replace provincial policies in guiding land use decisions in the municipality. The one-tier Oxford official plan would then become the pre-eminent document and reduce concerns about provincial applications of policy statements outside of what has been adopted in the official plan.

Subsection 59(2) of the County of Oxford Act states as follows: “The council of each area municipality is deemed to be a committee of adjustment under the Planning Act.” This provision of the County of Oxford Act may be unique in the province of Ontario whereby the council acts as the committee of adjustment. Section 25 of Bill 163 sets forth the new provisions regarding the role of council and the review of minor variance applica-

tions and subsection 45(10) specifies that the decision of the council on an application is final.

If current practices in Oxford continued after January 1, 1995, there would be no opportunity, unlike the rest of Ontario, for council to consider reviewing the committee of adjustment decisions. In the Oxford case, the council and the committee are the exact same people with the only difference being the procedures that are followed at the respective meetings. The public would not likely appreciate appealing to the same body that made the original decision.

On the surface, the solution would appear to be for councils to simply assume the functions of the committee of adjustment, but that is not what is intended by Bill 95, the County of Oxford Act. The act stipulates that the area municipalities in the county will have committees of adjustment and those committees shall be comprised of council members.

The lack of an appeal mechanism in the case of Oxford county municipalities also raises a problem with the county council. At present, the decisions of the committees of adjustment in the county are reviewed by the county council in relation to their conformity with the county official plan. This review is important since the county plan is a one-tier document and therefore county council is the principal review agency in terms of determining conformity.

The county council, through its planning committee, takes this responsibility quite seriously and has, on several occasions, appealed decisions of local committees of adjustment when there were land use issues involved which did not adhere to the policies of the county plan. If there is no change to Bill 163 as presently worded, an area municipality in Oxford would be deciding the issue of conformity with the county official plan.

The preference of the county on this issue would be for Bill 163 to establish an appeal process to the county council or its delegate. This approach has the advantage of preventing an influx of applications for amendments to zoning bylaws as applicants seek to ensure that there is a means for further redress if the application is denied by a council acting as the committee of adjustment.

The following options are possibilities:

- county council acts as the appeal body; or
- a committee of council, such as a planning committee, act as the appeal body.

These options have the advantage of maintaining the decision on appeals within a local forum and consider the expected increase in time that would be involved in minor variance appeal hearings and suggest that a smaller group be involved; a group that can acquire some experience with these hearings over time.

In the background document entitled Understanding Ontario's Planning Reform that accompanied Bill 163, one of the three goals identified for the reform process was streamlining in order to reduce some of the delays and red tape associated with land use planning practices. The county of Oxford, based on our review of the provisions of Bill 163, has to assess responses as mixed. In some sections, Bill 163 contains provisions which do in



fact assist in establishing planning deadlines which should contribute to a more efficient planning process. On the other hand, the act introduces some changes in public notice requirements and general time frames which seem to be quite regressive in terms of achieving a streamlining goal.

1530

An example of one of the more regressive steps is the introduction of a 30-day waiting period between the public meeting held on an official plan amendment and the actual adoption of the amendment by council. The question arises as to what purpose is served by this 30-day delay. In the case of Oxford county, there is usually some time lapse between the formal public meeting held by the county and the adoption of the amendment by council, but it is rarely more than 8 to 12 days.

Another time delay found in Bill 163 is in section 30 of the Planning Act, where a 30-day notice requirement is introduced for all consent applications. This is a particularly difficult provision in Oxford, where the county land division committee has been authorised by the eight local municipalities to handle minor variance applications that are directly associated with a proposed consent. Section 25 of Bill 163 also requires a minor variance application to be heard within 30 days of its receipt by the clerk of the municipality.

As pointed out by associations such as the Ontario Association of Committees of Adjustment and Consent Authorities, the combination of subsection 45(7) and subsection 53(4) will create real difficulties for our land division committee since it will probably necessitate the deferral of applications in order for them to be dealt with concurrently.

In Oxford one of the most positive examples of streamlining has been the ability of the land division committee of the county to deal with minor variances. The committee on administration of justice should look at the possibility of allowing all land division committees in the province to handle minor variances that are directly associated with the consent if the local municipality is prepared to delegate this authority to them. The public in Oxford has certainly benefited and there is no reason why the same advantage should not be extended to the broader populace.

Bill 163 does present another problem for Oxford and its land division committee by eliminating minor variance appeals. When a land division committee decides on a consent and minor variance combined, one decision is subject to appeal, the other is not. Real problems are likely to occur and the question arises as to whether this was foreseen and sufficiently thought through in terms of the complications created.

The county of Oxford would also support provisions in the Planning Act which would authorize down-delegation to planning officials if in fact streamlining can be achieved. There are certainly examples in the province where some of the administrative work associated with the processing of plans of subdivision has been down-delegated and the results show savings of four to six weeks. In Oxford, there has been down-delegation associated with the processing of site plans and especially

amendments to site plans in some of the urban centres. Once again, the advantages have been worthwhile.

Another example of streamlining being defeated is the introduction of the requirement for a public meeting on a plan of subdivisions. The act does not make reference to "if required by regulation," but the county of Oxford would certainly go on record now as opposing this move which turns the clock back to bygone days. In many cases, this public meeting would merely repeat issues that have already been dealt with at official plan or official plan amendment meetings. If councils want to hold such a meeting, that decision should be left with the municipality and not be prescribed by provincial regulation.

Oxford's reaction to the various time limits and public notice requirements in the act are certainly not all negative. The county certainly supports section 10 of the act, which imposes a 30-day limit on official plan referrals. This new restriction is long overdue and fills a void of uncertainty which has been associated with the possibility of referrals in the past.

The county also supports time limitations that have been imposed on approval authorities with respect to plans of subdivision, an official plan or official plan amendment.

Oxford county council very much appreciates the opportunity to comment on the provisions of Bill 163 as they relate to the Planning Act. The county would ask that you give full consideration to the issues that have been raised in this submission, as well as the more detailed comments which constitute the second section of this submission.

The county of Oxford looks forward to reviewing the changes that this committee sees fit to make in response to the many submissions that have been and will be made. The overall objective of this committee and municipalities should be to achieve a planning system and process which achieves the goals of accountability, protection of the environment and streamlining. We want to assure you that Oxford county is prepared to play its role in achieving these goals. Thank you very much. I am certainly prepared to—

**The Acting Chair (Mr Alvin Curling):** Thank you very much for your presentation. I think we have about three minutes each for members to comment, and we start with the Conservatives.

**Mr McLean:** You started with me last time.

**The Acting Chair:** Oh. Mr Wiseman, we start with the government.

**Mr Jackson:** Well, don't start, Allan.

**The Acting Chair:** Here's your opportunity. Anyway, Mr Wiseman.

**Mr Wiseman:** I'll start, thanks. We certainly have heard a lot of very good things about Oxford and its planning over the last little while, so I commend you for that. I do have one question that seems to be a nagging one, and that is that the official plan, to me, takes a long time to come to fruition. It attempts to balance the various needs of the community: industrial, commercial, residential uses. During the process of the official plan and then its subsequent acceptance by the ministry and its

signing off, this becomes a planning document.

On page 4 you would like to see the official plan, as it currently stands, to be deemed to be consistent with provincial policy and, as such, replace provincial policy in guiding land use decisions in the municipality. I have some problem with that because it seems to me that there are too many official plan amendments, too many changings of industrial sections of official plans to residential, or residential to commercial, and it would seem to me that this would upset what should have been a balanced plan to begin with.

My question is, if we were to accept this recommendation, would you in turn agree that the only official plan amendments that should be allowed to an official plan would be those that were consistent with the comprehensive policy statements and Bill 163?

**Mr Down:** I think there are probably situations where they should be allowed and probably situations where there would have to be some compromises made. That's not saying that all of the policy statements of the provincial government should not be subject to change periodically also, and that is probably one of the difficulties that we have today, that some of the policy statements do not reflect changes that are taking place, because certainly it takes a period of time to prepare an official plan for a county. It also takes a considerable amount of time for policy statements of the provincial government. They should also be periodically reviewed with consultation of municipalities and the Association of Municipalities of Ontario.

**The Acting Chair:** Ms Harrington has a quick question.

**Ms Harrington:** Certainly, your county does have a good reputation with regard to planning, and I am glad that you are supporting the streamlining attempts and such things as time limitations. You gave a couple of examples here of what you described as not streamlining but the opposite, and one was the requirement for a public meeting on a plan of subdivision and also the case of where you have a minor variance and a consent combined in a decision of the land division committee where one is subject to appeal and the other is not. I am wondering if the ministry would like to comment and respond to your legitimate concerns here.

**Mr McKinstry:** I think there were three, and I'm not clear on the third, which is the minor variance one.

1540

**Ms Harrington:** I just picked out two of them.

**Mr McKinstry:** Okay. The first one is the public meeting on the subdivision and I guess our sense there was that official plans are made and then some people are not aware of what's in them so that when a plan of subdivision comes forward they're not aware of the fact that this area has been designated for residential. This was simply an attempt to make sure that people, citizens, are aware of what's happening in planning.

**Ms Harrington:** You're saying that hopefully it would not cause a lack of streamlining. What about where there's the ability to appeal?

**The Acting Chair:** I think we've extended the time

too much here now; your time is up. Mr McLean, I know you wanted to go, but I think it's the Liberals' time now.

**Mr Eddy:** Thank you for the extreme pressure we're under from the Chair. Thank you, your worship, for bringing forward the brief. I suppose it would be easier if more of Ontario was like Oxford county in the planning regard. I know you would agree with that.

I thought I was clear on the Oxford situation, but you talk about the county land division committee. It's responsible for severance applications, I expect, and then you talk about local committees of adjustments and that this has caused a problem. But there are other municipalities—I don't know about other upper-tier councils, but there are other municipalities where the council has decided to be the committee of adjustment, I think. First of all, do you want to continue the status quo in Oxford, the special provision that the council of each area municipality is deemed to be a committee of adjustment under the Planning Act? Do you see that staying?

**Mr Down:** Yes.

**Mr Eddy:** The land division committee is optional at the county level with Oxford as well as other—it is in other places. Is it optional with you?

**Mr Down:** Yes.

**Mr Eddy:** Oh. I really can't figure out what's the problem, but you're saying there is a problem with the new bill because of your particular setup in Oxford county, which is what I've gotten out of this, with the council being the land division committee and the local councils being the committees of adjustment. That presents a problem, but I'm not clear on why.

**Mr Craig Manley:** I believe that there are two issues associated with our particular setup. The first is that under the County of Oxford Act, with council as the committee of adjustment to hear variances, because it's all of council it would be a final decision. There's no mechanism for a council, if it was so inclined, to say, "Oh, we want some ability to review it." That's the first issue.

But the second issue, and I think it's much more important to us, is that our land division committee, which is responsible for creating new lots through the severance process, has been delegated the authority by our local municipalities to also grant variances associated with the consent. So if I want to create a lot that's a foot smaller, I don't have to go to the city of Woodstock and get my variance and then go to the county land division committee.

The situation under the bill would be that the variance decision would be final and the severance decision could be appealed. So if the land division said, "No, I'm not going to approve this new lot and I'm not going to approve the variance," I could appeal the severance but I couldn't appeal the variance situation. We found this ability for the land division to deal with both the variance and the severance to be an extremely efficient process.

**Mr Eddy:** So you see a provision in the act, an amendment to provide for this, possibly?

**Mr Manley:** We would like you to consider that.

**Mr McLean:** I guess if the ministry had used the



Oxford model across the province and in 163 there probably would have been a lot of people a lot happier.

You don't have lower-tier planning, do you; you just have upper-tier? Would you like to see lower-tier planning? I mean, that's in Bill 163. It's going to be there. But now you're going to have to do that. Is that right?

**Mr Hayes:** No, that's not right.

**Mr McLean:** The lower tier is not going to have to plan?

**Interjection:** No.

**Mr McLean:** It says they "may."

**Mr Hayes:** Not in Oxford.

**Mr McLean:** No, no. But I'm talking about in Bill 163. In Bill 163 it says that the lower tier may plan; the upper tier is going to have to.

**Interjection:** "May."

**Mr McLean:** That's what I said; it's right in here. It says it may and it may not. But the minister may bring in regulations which perhaps could change that.

**Interjection:** Not unless you change the wording.

**Ms Boeckner:** The people from the county could correct me, but the County of Oxford Act only defines a single tier of planning, so you'd have to change the regional act, not Bill 163, to make a change to that system.

**Mr McLean:** Thank you. That clarifies it very well. The other aspect of the Oxford model has been that I guess the best part of it was that my friend Charlie, who was a warden back in the 1970s, had a two-year term. Does the warden now have a three-year term which coincides with the elected council?

**Mr Down:** Yes, the County of Oxford Act sets out that the warden shall be elected for the term of council, which at the present time is a three-year term.

**Mr McLean:** And you're in your last year now. I wish you well. Thank you for your brief.

**Mr Eddy:** Could I say that Charlie is, I believe, Charlie Tatham, the former MPP for Oxford.

**Mr McLean:** The designer of the Tatham report.

**The Acting Chair:** Thank you very much for your presentation.

#### LONDON HOME BUILDERS' ASSOCIATION

**The Acting Chair:** May I call the London Home Builders' Association—Ric Knutson, Lars Bygdon. You have half an hour. You may leave some time, if you wish, for any questions by the members or you may decide to take the whole time. You may proceed.

**Mr Ric Knutson:** Thank you, Mr Chairman. I anticipate that we'll be somewhat less than half an hour, and some of the issues that we are raising hopefully will spawn a couple of questions from the committee.

I'm here representing the London Home Builders' Association both as a member of that body and on the request of Mr Bygdon beside me. By way of background, I'm a planner and have been so for in excess of 20 years, have worked for the province of Ontario, another province and a delegated municipality, and have been in-

involved in consulting, almost exclusively now, to the development industry over the last number of years.

At the outset, I want to hopefully calm you. I'm not here to re-present the submissions that have been made to you already by the Ontario Home Builders' Association. There are a couple of specific issues that I want to speak to you about today and I'll be restricting my remarks to those. I do, however, commend those comments, concerns, criticisms and questions of the OHBA in its written submission, and I believe it's making a verbal presentation to you on September 13. They are extremely important matters. Please understand, it's as if I make them here as well in terms of the importance of many of the issues that are there.

There are two technical issues that I want to speak about in Bill 163. The first one is a proposal of an amendment to section 6 of Bill 163, which is an amendment to section 3 of the Planning Act. What I would suggest to you is the addition of a new subsection: "That implementation guidelines shall be prepared and reviewed as part of the consultation process in subsection (2) above."

I believe it's fundamentally important to be able to understand policies and distil their meanings and understand how they apply, particularly to this industry, but also for the municipalities, that they have not only the more general policy but how that policy is being interpreted and ultimately implemented.

It's unfair to go out on consultation, I believe, on strictly a policy basis without understanding some of the innuendo and thought processes which are going into that articulated policy. Many of the policies—and I fully appreciate we're not here to talk about the policies before this committee—are marvellous statements. They're important statements about natural environment and conservation of energy and mineral aggregate resources etc.

Where I believe there is a flaw in them is that we don't know how they ultimately will be implemented through these official plans and I think it's important to understand that a policy on an important issue in GTA is not necessarily of any importance or relevance in Thunder Bay or Windsor or London. It's a criticism that has been spoken of greatly with the Sewell commission over time and we again raise that and I would suggest very respectfully, Mr Chairman, that that subsection be added so that we can talk about a whole package.

#### 1550

We note with interest that one of the impetuses of Bill 163 and the amendments was to ensure that there's accountability of the local councils in their decision-making, and this accountability is to have all matters related to planning decisions fairly before the public for review and that the decisions are made in the open.

We believe that having these implementation guidelines is no different than having an official plan amendment and its implementing zoning bylaw both before the public for review and comment at the same time or in a public forum so that they can be fairly debated and we can distil all of their meanings and understand how they impact upon our industry in particular. I believe this

particular amendment and having that clear consultation process, as anticipated by the act, would avoid creating some of the conflicts that I believe will occur. There are conflicts or potential conflicts between the policy statements. How are these going to be distilled?

We have over the past number of years had the ongoing conflict between the mineral aggregates act and the Food Land Guidelines, although the Food Land Guidelines were not a ministerial policy, but there's this conflict. Which wins? Is it the aggregate underneath? Is it the ability of the soil to sustain agriculture? How do we deal with these things? How do we resolve these conflicts?

We talk about having efficient urban forums and affordable housing, but we talk about policies which may have very vague interpretations, and we've had certain instances in the past, actually many of them, where there are almost as many interpretations to a policy as there are civil servants to interpret it.

*Interjection.*

**Mr Grandmaître:** They are all on Rae days.

**Mr Knutson:** That can put you into a never-ending loop of more studies or clarifications where, if we had that policy implementation before us at the outset, we may be able to eliminate or at least reduce the number of these ambiguities. Having the implementation guidelines at the same time would enhance the understanding of those policies, and the understanding not only of our industry but by the consulting industry, by the municipalities and by the civil servants, so we would all be operating, if you would, from a similar songbook.

By having the policies there, as I previously mentioned, we could identify some of the regional differences, and certainly where some issues are not particularly important or there's less of a priority, that could be attended to, notwithstanding the fact that it is a matter of provincial interest.

Affordable housing I think is a principal example of that. In London, through their official plan, they have policies to track affordability. London currently sits at 62% of the available housing stock as being within the affordability guidelines. Therefore, the provincial policy, which specifies new housing being 30% affordable and 50% of that for the lowest 30th percentile, may not have the same relevance in terms of the affordable housing stock here as it may in GTA or in some other area where there's a significant concern. That may cause certain regional variations. When policies are being set down in local official plans, a policy, although of provincial interest on an overall basis, may have no local merit or bearing whatsoever.

You would also operate to give effect to the philosophy of streamlining through timely approvals. As I mentioned before, we get caught in these continuous loops of more studies, and oftentimes we have this very vague policy. When the wetlands policy came forward, many of the biologists were saying: "Well, we don't really understand this. We've got this term called 'lands adjacent.' Does that mean a buffer?" Well, no, it doesn't, as it finally came out, but there was environmental impact

statement after environmental impact statement required to talk about this, and evidence was given at an Ontario Municipal Board hearing I attended. A provincial employee said, "I know it says 120 metres, but I'd like to see one and a half kilometres as a buffer." The board then becomes very confused. We didn't have these. We had the policy; we didn't have the guidelines. Again, I commend that all of these be brought forward at the same time.

What we're concerned about is that the government wants to provide half the picture for consultation and then in fact prescribe the surprises in the implementation guidelines, which will have no scrutiny and no consultation and no ability for us to point out to you some perhaps practical flaws or pitfalls in going ahead in that way.

We've certainly been concerned with the linkage of policy guidelines and the term "be consistent with" for some time. Although we're not here to discuss these policies, we are being given these very general statements, awaiting guidelines into the future, and the term "be consistent with" is a complete unknown and in fact quite an ambiguous term which can mean many things to many different people. That whole concept is being more fully addressed in the Ontario Home Builders' Association presentation and I won't try to duplicate that here today.

We're very concerned that panacea policy cannot work unilaterally, as, say, GTA issues are not necessarily those of southwestern Ontario. Northern Ontario natural environment or resource issues, again, may not be of any interest or value in the GTA, period. In the absence of flexibility in policies, many interpretations will be possible, and I believe that will result more in chaos and delay.

Here's what I believe is likely to occur: Official plans will be delayed. Therefore, developments will not be policy-approved in official plan amendments. Zoning will therefore not be possible. Lot creation will therefore be delayed. Shortages will occur in lot supply, which will result in cost increases on a market supply-demand situation. These are not theoretical things. We're seeing them happen here in London right now. London is currently in a very precarious position in terms of lot supply. We therefore strongly recommend that the policy statements be reviewed with the guidelines.

The other technical section of Bill 163 that is of serious concern is section 68. It's on page 44. If Bill 163 were enacted as proposed, and dealing with subsection (34), it would eliminate the ability to do administrative red-line revisions to plans of subdivision. By subjecting any changes to a plan once it's draft-approved to the public, what in fact you are doing is taking something where the lot pattern is—

**Mr Hayes:** Excuse me. What section?

**Mr Knutson:** It would be section 51, page 44, at the top. We're concerned with this inability to do these minor administrative changes to plans of subdivision.

What I'm talking about are changes which conform to the zoning, which is there by way of public process, and



the official plan, which is there by way of public process. I'm not sure the general public has an issue related to whether the lot to be registered is 45 feet or 48 feet or 50 feet, provided that the general intent of the bylaw—or the bylaw precisely—is maintained.

I do have a very current and practical London example of this. In May of this year, one of my clients received draft plan approval for a very comprehensive 630-acre development. It's a community. It'll house 12,000 to 14,000 people and will be built over the next decade. The zoning on the whole 630 acres addresses certain minimum standards regarding lot size, frontage and area. It is expected that this draft plan, however, will come to the market in 10 to 12 individual registered plans, or M plans. They will all be consistent with the road patterns. The road patterns won't change.

What is of great significance in this is that the market will change significantly over the next decade. Unfortunately, we don't and can't anticipate the ways that that market will change. The home building industry and the development industry in fact respond to change. We respond to market conditions. We don't anticipate and predicate market conditions.

Therefore, a change of lot size from draft plan to registered plan should not be a matter of public concern, provided again that the lots conform to zoning. If the red-line revision to a subdivision is one which requires a rezoning, well, that is a public process. Land use is set.

The effect of eliminating the administrative red-line revisions would be to subject a development to further public reviews and appeals where there is already conformity with an official plan, a zoning bylaw. The only possible purpose would be delay. There is no greater public good to be served in legislating that these cannot be done.

The last issue that I have to raise with you has to do with the timing of Bill 163. This legislation, I believe, including the provincial policies at the current time, is flawed. The implications of this legislation are far-reaching. They touch absolutely every individual in this province and many corporations and individuals outside this province. It would be a travesty for the economic and environmental health of this province to be compromised for the purpose of simply rushing an act through that is of this magnitude in terms of its importance.

We do not dispute the need for changes in the system. We don't dispute the need to avoid the duplication between environmental assessment processes and planning processes and integrate those. We don't dispute the necessity of putting in place sound practices that have respect for natural environments. Hasty legislation, however, can do far more harm than some of the benefit that's intended to be done.

As a consultant, I'm sitting here almost of two minds, and this is somewhat of a gratuitous comment. On one hand the studies and issues that are being raised are going to be magnificent for my consulting practice as I try to assist the builders and developers who are my clients. On the other hand, and a far greater issue, is being hopeful that we still have an industry that is healthy and vibrant and that there's a healthy competition between players

and that there are more players as opposed to fewer players. What we're seeing right now is a concentration of lot generation ability among a very, very few large development corporations, and that's happening here in London as well as it is in Metro. It takes a significant amount of resources. The community I mentioned to you earlier was many million dollars in study costs to bring it to draft approval and in excess of seven years.

I have other issues I'd be happy to raise, but I think I'll stop there and open it to questions from the committee.

**The Chair:** Thank you. Mr Curling, four minutes.

**Mr Curling:** Thank you for your presentation. I'll just maybe focus on one of the points you made earlier on in regard to the proposed policy on affordable housing instead of the 30 percentile that is required. Maybe it's not you who can answer this question, maybe it's the parliamentary assistant or the ministry or if the minister will be here and then I catch his attention, in regard to the 30 percentile that we wanted, that is required by any new housing that is being developed in the municipality. As they have said here, in London 60% of the housing is affordable. How would we go about getting 30% on top of that in new housing being developed in the municipality?

**Mr McKinstry:** If I can make a clarification, I guess my view there would be that if in the London situation housing is already affordable, then it would in fact meet the requirements of the policy statement. That 30% would probably already be met.

**Mr Curling:** Well, you're not very clear then in that, because it talks about new, while being created, has to be 30%. I think, one, it should be specifying there that if it already exists, 30% affordable housing within the municipality, they do not need that.

**Mr Knutson:** If I can make a—

**The Chair:** I'm sorry. Is it in relation to that?

**Mr Knutson:** Absolutely, Mr Chairman. That's why we would like to have these interpretation-implementation guidelines there and fully available to review in conjunction with the policies, so these issues could in fact be dealt with.

**Mr McKinstry:** What I was trying to say is, it is the new housing. So 30% of the new housing. My assumption here is that in London, 50% would be in fact affordable in London in any case, so both the existing housing and the new housing would be affordable. Am I right?

**Mr Knutson:** My understanding of the proposed policy is in fact that all new plans of subdivision, all new plans of condominiums, must contain 30% within that affordability guideline and that, further, one half of that must be to the lowest 30th percentile of the economic field for that jurisdiction or for that housing market area.

**Mr McKinstry:** I don't want to get too deeply into a debate on the individual policies, but it's not each subdivision, it's each community planning area.

**Mr Knutson:** I raise it only as an example of how we can assist the policy by having the implementation guidelines in front of us.

**Mr Curling:** Could you comment about intensifica-

tion? I know the government is very active in having more new housing develop in intensification, without sometimes the regard for some of the impact that is happening as we have housing intensification. In London, what impact has it got?

**Mr Knutson:** There are a couple of impacts. I think one of them is in the courts, related to Bill 120, and we're not here to talk about that. There are a lot of aspects of holus-bolus intensification without understanding what the impact of doubling the occupancy of a particular building or a particular development is, or doubling the number of units in a town house project without regard to the number of parking spaces that were there by design, the size and capability of those sewers, the size of the electrical distribution system and all those other very fundamental things.

Intensification is something that is important. It can certainly be done, but on a studied basis, and it doesn't suit every site. As a planning consultant, some things work better than others. Some of the former initiatives in terms of abandoned industrial sites make great housing intensification sites and they're marvellously successful in the marketplace, and London has a couple of very good examples of those. But it doesn't work on a general and across-the-board basis. Sorry.

**Mr McLean:** I want to welcome you to the committee. You certainly bring a different perspective to this committee from what we have heard from some others. I get from you that you don't really feel there's going to be much difference after Bill 163 is law than what's going on right now.

**Mr Knutson:** Oh, quite to the contrary. I believe that Bill 163 is fraught with all kinds of difficulties. It in fact will protract the process, as opposed to making it shorter, as has been set out as one of the principal reasons for Bill 163.

**Mr McLean:** You indicated briefly about local council decision-making. It appears from what I heard from you that you feel it's going to be more complicated than what it is now. Is that what you're telling us?

**Mr Knutson:** Decision-making that I'm familiar with in this general region is typically in public. I don't believe there will be any fundamental changes caused by that. What I'm concerned about is the duplication of that consultation process for no great advantage. If there is a public-good issue to be to advantage, then I wouldn't be here complaining about it, or at least in my mind.

But what we're talking about is a matter—and we go back to the subdivision red-lining. It's an administrative matter that, as the market requires, a couple of years ago, 60- and 65-foot lots. Well, the market right now is 35- to 50-foot lots. We've been able to administratively amend the lot size down, fully in accordance with the bylaw, the side yards, the rear yards and lot areas.

Who benefits by having another go at the subdivision in another appeal process? We've seen many vexatious appeals and appeals that are for the purpose of delay. What's to be gained by it?

**Mr McLean:** I guess the question I have then, finally, is, why did the municipality want to annex about 34,000

acres around it if you're having trouble now getting—

**Mr Grandmaître:** It was 64,000 acres.

**Mr Knutson:** It's 64,000.

**Mr McLean:** It started out a little lower than that.

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**Mr Knutson:** It did. I'm not sure how we got to the full 64,000 acres, although someone involved in the process—

**Mr Eddy:** I can speak to that.

**Mr Winninger:** We know you can.

**Mr Eddy:** We would be here for a while.

**Mr Knutson:** In response, London was in fact running tight to its boundaries in terms of land that was serviced. There was a demonstrable need for additional lands. Whether those additional lands total 34,000 acres or whether there were some provincial reasons for wanting to have that to ease administrative boundaries or whatever, those questions I really can't answer. There certainly is a need for additional lands to come on stream.

As you know, London's in the process of Vision '96, its new official plan process, as a condition of that annexation. We're looking forward to some of the results of that and we anticipate a very different official plan from the one we've had in the past.

**Mr Winninger:** I think the opposition was reading my mind, and that's a very scary thing, because I too was struck by your comment about the unavailability of new lots. I thought that as of January 1, London became 80% the size of Metro Toronto. We added an inventory of 64,000 acres. So I was going to ask you, are we talking here about conventional new lots in conventional subdivisions as we know them now? Is that where the shortage really lies?

**Mr Knutson:** There's a shortage in a number of areas of lot and block supply for both medium-density housing and in fact for single-family housing. If we returned to the average development level of the last 15 years, London would very quickly be out of registered lots. I believe—Lars, correct me if I'm wrong—it's somewhere in the order of an 18-month supply, and in draft-approved lots I believe we would be completely out of inventory in approximately three and a half years.

**Mr Winninger:** You're part, I think, of the Vision '96 process; at least the home builders' association is, is it not?

**Mr Knutson:** We certainly have been making comments through various components of that. We do not actually sit on any committees that I'm aware of.

**Mr Winninger:** But as you said, Vision '96 was kind of a condition of passing Bill 75 and certainly part of the implementation. It seems to me, if we're looking 20 years down the road, which we are, at least with Vision '96, surely your concern, ie, building new homes to shelter people, has to be a very important component of that planning. It's quite distressing to hear that there's a shortage of lots, with all that land on our horizon now.

**Mr Knutson:** With the land there we will have an increased ability to look after that problem into the



future. We do see short-term difficulty. Vision '96 is in front of the minister January 1, 1996. Typically, with appeals—not everyone's going to agree with what's in there—which will come from that process, Ontario Municipal Board hearings, some could be substantial. The last time the official plan was enacted, in 1989, it received approval, I believe, three years later. So that takes us from January 1, 1996, to January 1, 1999. We're in 1994; that's five years. We typically need, for a healthy market and competition and maintaining reasonably low lot prices, which we've had the benefit of in London, a minimum five-year supply at any given time.

**Mr Winner:** You would agree there have been some interim approvals in the annexed area for building?

**Mr Knutson:** Yes, there have.

**Mr Winner:** I don't know if we have time left or not. One minute—

**The Chair:** Ms Haeck would like to ask a question.

**Mr Winner:** Certainly.

**Ms Haeck:** To suggest that I fully agree with everything you've said would be wrong. I would say that you did catch our attention on a couple of points.

I have to say that on behalf of my own constituents I would differ with you, rather strongly as a matter of fact, to the extent of your comment that some things are just sort of administrative approvals and nobody should balk at the fact that these things go through, for what you've referred to as a pretty substantial housing complex. I know in my area that people would just at this point be so much beside themselves that they would be excluded from talking about this kind of issue. I'm sorry, they are demanding to know, they are demanding participation, and that's one of the reasons we're here.

It was much more of a comment, but obviously you're free to respond. But people really and truly want the participation, and I will tell you, locally they are at the point of almost going through Municipal Affairs, the ministry reviewing municipal councils, because they are just so offended by what they see as the deals—this is their quote, not mine—the deals behind closed doors with the developers in order to move these things through, and they don't have the opportunity for putting their concerns forward.

So the public wants to know, the public wants the participation, and I think you should understand. Maybe it's different in London, but I suspect it's not. But definitely down my way they want the participation.

**Mr Knutson:** London is a great place. There's no doubt about that.

I think to focus my comments, I'm not talking about changes in a plan of subdivision where—there are no road changes, there are no land use changes. I think it's important to identify the public issue involved.

**Ms Haeck:** Very serious—

**The Chair:** I'm sorry, Ms Haeck, we've run out of time. Finish your comments.

**Mr Knutson:** I think it's important to identify the public issue involved. If you're talking about changing road linkages, if you're talking about changing land use,

by all means. That's not what my comments are directed to. It's whether we're talking about a 45- or a 50-foot lot and the ability to administratively make those red-line amendments to those lot sizes which conform to the zoning bylaw that was passed.

**The Chair:** Mr Hayes needs to make a point by way of clarification.

**Mr Hayes:** Real quickly. Thank you, Mr. Knutson, for your presentation. You commented on part III, section 6, about the implementation and the policies and not having input and not knowing what is coming out of these. My question to you is, are you familiar with the implementation and advisory task force? I'm really surprised to hear you say that because I see on here that you have two members of the Ontario Home Builders' Association right on top who are going to be working on that implementation committee to work on these policies.

**Mr Knutson:** Yes. I also believe there are two from the UDI and one from the Greater Toronto Home Builders' Association. I'm certainly familiar with that committee. The larger consultation process is what I'm referring to. In understanding the policy, it's necessary to understand the meanings of the policy through these interpretations, so I believe the policy should be open to interpretation. Let the task force do its work, based on draft policies, and bring the whole thing out for public comment when it's completed so that we have a complete package.

**Mr Hayes:** So you want to clear up the frustration that you've been going through for many years, right?

**Mr Knutson:** Yes.

**The Chair:** We've run out of time. Thank you very much for the presentation to our committee.

#### TOWNSHIP OF PUSLINCH

**The Chair:** We invite Reeve Archie MacRobbie and Deputy Reeve Brad Whitcombe.

**Mr Eddy:** While they're coming forward, Mr Chair, there was a question on why the London-Middlesex annexation proceeded. Would you like me to fill in and do that now?

**The Chair:** No.

**Mr Eddy:** On the bus?

**The Chair:** At the end of the meeting, once we break up.

*Interjections.*

**The Chair:** Welcome. Please begin.

**Mr Archie MacRobbie:** Thank you, Mr Chairman and members. On behalf of Puslinch township council, I would like to take this opportunity to thank the committee for listening to our concerns.

Puslinch is a small, rural municipality of 5,000 people, bordering both Guelph and Cambridge. The 401 runs through the middle of our community, and we are both blessed and cursed with abundant gravel resources. Our land is rolling and is of moderate value for farming. Due to our location and the scenic nature of our countryside, we have faced strong development pressures over the past two decades.

It is not our intention to provide you with a detailed analysis of Bill 163. We are confident that other groups such as AMO and our county of Wellington will provide you with that input. We would propose to give you a small, rural community's view of the existing and proposed planning systems.

Negative perception of rural Ontario: We believe that the provincial bureaucracy holds a very negative attitude towards rural Ontario. You do not trust us to manage our affairs and have developed a heavy-handed set of policy statements which eliminate the ability of rural communities to make important planning decisions for themselves.

Most rural townships take a responsible approach to community planning. Puslinch has had both an official plan and a zoning bylaw for nearly 25 years and we keep these documents up to date. Ten years ago we zoned all our environmentally sensitive lands for protection, we have put a groundwater monitoring program in place—and I'd like to say that's been in place for over five years now; I think it's maybe the only one in Ontario—and we are now involved in our third watershed study. Council and planning committee consult extensively with the public, and we try hard to respect their views.

Despite our efforts to plan responsibly, we continue to feel a negative provincial attitude towards our community. Perhaps it is because rural communities have a healthy regard for private property rights which is not shared by provincial bureaucrats. We believe it is our responsibility as elected officials to use our discretion to ensure that new policy directions do not fall too heavily on individuals. We understand that Bill 163 intends to remove our ability to use that discretion by requiring blind obedience to provincial policy.

Official plans: When Puslinch began its involvement in planning, official plans were community-based documents which told council how our people wanted us to plan the township. People have been heavily involved in this process because it provided them with a meaningful method of shaping their living environment. The rules were ones which we imposed on ourselves, and this gave them strength.

Over the last decade official plans have changed dramatically. The province has come to see the official plan as the best means of achieving provincial land use interests. Initially, provincial agencies asked to have their concerns recognized in our official plans and we cooperated where our citizens were in support. Gradually, provincial agencies began to demand that their policy interests be incorporated into our plans and used provincial policy statements as a hammer to force their requirements into our plans whether our citizens agreed or not. Public involvement did not matter when it came to the interests of the provincial agencies.

Official plans are no longer community-based documents, but rather are largely provincially dictated documents. Bill 163 and the new provincial policies seem to legitimize this change in the nature of official plans.

Puslinch council is concerned that planning policies that are imposed from afar will not be as strongly supported as policies developed by our community and the commitment to planning will decline when people

find that their input does not carry very much weight. You can legislate all the public meetings you want, but if the public does not feel that it can influence the process, it won't participate or it will be frustrated and angry with the government.

County planning: Wellington county planning began at the local level, and the county has taken an increased role over the years. The county has established the planning department, which provides day-to-day assistance to the 21 local municipalities in Wellington. The county planning staff provide a good service and have earned respect because they come to council meetings and public meetings and make an effort to understand the views of our citizens and work with the community.

The county has an official plan which Puslinch must comply with, and we support that plan because we had direct input into it and because it leaves room for local communities to apply discretion within the county policy framework. Wellington county is also the approval authority for severances in Puslinch, and we support this county function because the county land division committee follows our township policies and treats our citizens with respect. They also operate efficiently and are close at hand if an issue arises.

Puslinch council believes that Wellington county should be entrusted with greater approval authority for planning matters. We strongly endorse the position of AMO, the county planning directors and our county of Wellington that counties with approved official plans should be given the authority to approve local official plans and subdivisions. Wellington county has demonstrated the ability to manage these functions.

We would also suggest that there is no need for municipal planning authorities in counties actively involved in planning. Other levels of planning are the last thing we need if you are serious about streamlining and cost saving.

On behalf of Puslinch township, we would respectfully recommend that:

(1) The province should restore community-based planning by drastically altering the provincial policy statement to leave more room for local planning policies and the views of the public;

(2) Bill 163 should be amended to delete subsection 6(2), leaving in place the requirement "to have regard" for provincial policy so that elected municipal officials retain some discretion in dealing with provincial policy;

(3) Provide Wellington county with the authority to approve local official plans and subdivisions by amending section 10 and section 28 of Bill 163 as proposed by AMO, Wellington county and the county planning directors;

(4) Eliminate the potential for municipal planning authorities in counties actively involved in planning by amending section 8;

(5) Make such amendments as are possible to place greater decision-making in the hands of elected and accountable local officials, rather than some special purpose bodies and the provincial staff.

**Mr McLean:** Welcome to the committee, Archie. I



want to thank you for your brief. You make some very excellent points, and the one point that I want to try and find out is with regard to the counties being given the approval of their official plans, being given the authority to do that for the local official plans and subdivision. I'd like to try and find out from the ministry when those approvals are going to come. Are they only going to come at the direction of the minister, or are there going to be some guidelines laid out whereby when counties put on their official plans, they're going to be given the authority to meet that approval stage?

**Mr McKinstry:** The way it stands now, the legislation simply enables the minister to delegate to counties, and we haven't changed that. I don't know what the minister will decide in terms of when he wants to make the decision to delegate, so I'm not sure that I can give you a full answer.

1630

**Mr McLean:** Is there going to be anything in the regulations which would maybe indicate that once they had provided an update and an official plan that meets the ministry's approval, within a period of time there would be a delegation of authority?

**Mr McKinstry:** What I can speak to is the general principle that the government is working towards, and that is to get development approvals to the local level, to the municipal level. So as far as the government can do that, my view would be that the government would do that. In terms of the regulation, the regulation will set out which counties are required to plan. One of the advantages of having a plan that we see is that then we'd be able to delegate. But it is a discretionary authority and that's why I'm having some difficulty giving a definite answer of when.

**Mr McLean:** Wasn't that one of the recommendations that Sewell made, that the authority should be delegated to the local municipality once they had their official plans in place?

**Mr McKinstry:** That's right. The commission did recommend that, and I don't think we disagree with that. It's just not specified in Bill 163 that once that happens, the counties get plans.

**Mr McLean:** I guess the problem I have is that Mr Martin and Mr Sewell and Mr Penfold all were involved in politics and they all knew what's going on in downtown Toronto, but they just kind of forgot about northern and central Ontario when it comes to making the recommendations that you need in order to continue to do what you've done in the past.

What do you say with regard to the section with our environmentally sensitive lands for protection? You have some hamlets in your municipality?

**Mr MacRobbie:** Yes.

**Mr McLean:** What's going to happen to them under the proposal?

**Mr MacRobbie:** The only one we had—well, we've got Aberfoyle. Morriston was a police village, and then Arkell. The police village is being deregulated as of January 1, 1995. We have that order now. All the police villages in the county are being deregulated.

**Mr McLean:** Really? That would be under your new official plan they would have to do that, would it?

**Mr MacRobbie:** No, that was done by order in council.

**Mr McLean:** Is that the only county you're aware of where that's happened?

**Mr MacRobbie:** Yes.

**Mr McLean:** I know the county of Simcoe was restructured and it happened there.

**Mr MacRobbie:** I think under the restructured system in Simcoe it did happen, but we did that in Wellington on our own.

**Mr McLean:** So it was a request by the county of Wellington, was it?

**Mr MacRobbie:** Yes. Well, it started out as a request from the local municipalities, the local townships.

**Mr McLean:** Thank you for appearing today.

**Ms Haeck:** Thank you for your presentation today. I wanted to turn to page 5, number 1, which you raised on behalf of Puslinch township. You want to "restore community-based planning." I guess my question to you simply is, what is your definition of community-based planning?

**Mr MacRobbie:** The closer you leave the planning to the community, the better it seems to work, in my opinion.

**Ms Haeck:** Okay. From everything in talking to people, Mr Sewell and Mr Penfold and a number of other people—Mr Penfold from Guelph, if we may be so bold to say, not from the GTA—who made some technical remarks to us about their years of work on what's being proposed here, they have definitely reconfirmed their belief, and obviously, to my mind, what this government believes and what the bill reinforces, that it is community-based planning, that the community will, through a whole range of consultations, have direct a influence on what the official plans are, what the plans of subdivision are. For myself, I have to tell you, I think the number of meetings required by Bill 163 isn't enough. I would like to see more meetings because I think that people in my area would be happier for more meetings to deal with the whole issue of what is being planned. So I'd be interested in what you think of that kind of public input into the whole planning process.

**Mr MacRobbie:** I think, number one, the local municipality along with the county municipality would make a better planning function than what it is now in the province.

**Ms Haeck:** But you do agree—and I don't want to put words in your mouth—that there should be lots of room for the average resident, your constituents, to actually have input?

**Mr MacRobbie:** Yes.

**Ms Haeck:** Then I don't think that what we're trying to do and what you really feel are very, very different.

**Mr Grandmaitre:** Well, Christel, the difference is—

**The Chair:** Okay. I'm sorry, no. Ms Harrington.

**Ms Harrington:** Just a brief comment. I note that on

page 4 you say, "the county land division committee... treats our citizens with respect." Well, that leads me to wonder, who is not treating you with respect? I would like to then go back to page 1—

*Interjections.*

**Mr Hayes:** You should know better.

**Ms Harrington:** Maybe the gentlemen could comment as soon as I am finished. On page 1 it says: "provincial bureaucracy hold a very negative attitude towards rural Ontario. They do not trust us to manage our own affairs and have developed a heavy-handed set of policy statements which eliminate the ability of rural communities to make important planning decision for themselves."

I would like to tell you that the policy statements are developed by government, and government is—that is, we are—responsible for what those statements are. They are very important to the future of this province, but I don't think we have time to get into the actual details of what those policy statements are. I just want to end my remarks by saying that we now have a Ministry of Agriculture, Food and Rural Affairs which certainly puts a lot of emphasis on the rural affairs of this province, and all across southwestern Ontario our government has a rural caucus that spends a lot of time thinking about the concerns and needs of rural Ontario. So I would like you to know that, and if you have any comments, please feel free.

**Mr MacRobbie:** Well, the biggest problem I have is, whatever happens to the GTA, that becomes policy for the whole damn province. I don't think that's right, because what happens in GTA does not fit our bill out in rural Ontario.

**Ms Harrington:** I object to that statement.

**Mr MacRobbie:** That's very true.

**Mr Jackson:** A little more objection, Mr Chairman, but it's true.

**The Chair:** Mr Jackson, excuse me. Mr Eddy.

**Mr Eddy:** Thank you. I appreciate the opportunity to calmly set forth my views too. Welcome, your worship, and thank you for presenting the brief. I think again we've seen the difference between urban Ontario and rural Ontario accentuated.

I have an example that I'd like to use that I think makes your point, and you're involved because under the Aggregates Act, municipalities must in their official plans recognize aggregate resources and allow for their development at some time.

Now what happens is, the township of Puslinch, the township of North Dumfries in my riding, South Dumfries, Brantford township, because we're located along the Grand River and have tremendous gravel deposits,

resources, to a depth of 120 to 150 feet, the finest gravel in Ontario, and because your official plans have to recognize that and that's required by provincial directive—and probably right—because that's there, then those who wish to withdraw the aggregates can come in and buy this property, that property, this property, one over here. People get very upset when they see scattered aggregate extraction that is destroying the municipality: To hell with agriculture, to hell with everything else; it's aggregate production that's the big thing, and it's happening.

It's because it's provincially directed, and what they say in North Dumfries is: "We want more control over this and we want to decide. If it's aggregate resource, we want to say, 'This is the area where the aggregate's going to come out, and we're going to do it progressively and we're going to do it before development takes place.'" I think that's where we're at cross purposes on occasion, and that one comes to mind.

Do you agree with that approach? You have to recognize your official plan, and then you don't have any control, because if any developer goes to the OMB, they get it; it's in the official plan. Is that one of the problems, and are there others?

**Mr MacRobbie:** I think, if you go back to the Puslinch official plan that came out in 1973, in the process of that, the gravel was recognized then. There was no testing done or anything, but we knew it was there. Just from living there all our lives we knew it was there. So that was recognized. That got into a hearing which was very extensive three years ago, but I still think these things have got to be recognized in an official plan. We've been doing this for years.

**Mr Eddy:** Right. But you need more control over what you do in your municipality.

**Mr MacRobbie:** Yes.

**Mr Eddy:** I think the policies need to be looked at from a rural perspective and see how they could be honed or changed to provide for rural Ontario more, to have more say about what happens and when it happens.

**Mr MacRobbie:** Yes, I could agree with that.

**Mr Hayes:** Agreed.

**The Chair:** Thank you very much for coming and thank you for the brief that you have made to our committee.

**Mr MacRobbie:** Thank you very much for listening to us.

**The Chair:** A pleasure.

Two reminders to the committee members: Tomorrow we start at 10, and our bus leaves at 5 today, so if all of us who are leaving on the bus can be at the bus at 5, we would appreciate that.

*The committee adjourned at 1641.*





## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Tilson, David (Dufferin-Peel PC)

Wilson, Gary, (Kingston and The Islands/Kingston et Les Îles ND)

**\*Winner, David (London South/-Sud ND)**

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Eddy, Ron (Brant-Haldimand L) for Mr Murphy

Grandmaître, Bernard (Ottawa East/-Est L) for Mr Chiarelli

Hayes, Pat (Essex-Kent ND) for Mr Malkowski

Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick

McLean, Allan K. (Simcoe East/-Est PC) for Mr Tilson

White, Drummond (Durham Centre ND) for Mr Bisson

Wiseman, Jim (Durham West/-Ouest ND) for Mr Gary Wilson

### **Also taking part / Autres participants et participantes:**

Ministry of Municipal Affairs:

Boeckner, Pat, manager, plans administration branch

Hayes, Pat, parliamentary assistant to minister

McKinstry, Philip, acting director, municipal planning policy branch

Sidebottom, Peter-John, senior policy adviser, local government policy branch

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Stobo, Carolyn, research officer, Legislative Research Service



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Third Session, 35th Parliament

**Assemblée législative  
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Troisième session, 35<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Thursday 1 September 1994

**Journal  
des débats  
(Hansard)**

Jeudi 1 septembre 1994

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

**Planning and Municipal Statute Law  
Amendment Act, 1994**

**Loi de 1994 modifiant des lois  
en ce qui concerne l'aménagement  
du territoire et des municipalités**

Chair: Rosario Marchese  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Thursday 1 September 1994

Jeudi 1 septembre 1994

*The committee met at 1002 in the Wheels Inn, Chatham.*

PLANNING AND MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT DES LOIS  
EN CE QUI CONCERNE L'AMÉNAGEMENT  
DU TERRITOIRE ET DES MUNICIPALITÉS

Consideration of Bill 163, An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes related to planning and municipal matters / Projet de loi 163, Loi révisant la Loi sur la planification et l'aménagement du territoire de l'Ontario, la Loi sur les conflits d'intérêts municipaux, et modifiant la Loi sur l'aménagement du territoire et la Loi sur les municipalités et modifiant d'autres lois touchant des questions relatives à l'aménagement et aux municipalités.

## COUNTY OF KENT

**The Chair (Mr Rosario Marchese):** I'd like to call the meeting to order. We're happy to be here in Chatham. We are asking Mr Aaron De Meester isn't here, so we'll begin with the county of Kent. I understand that Warden David Langstaff is here, Mr Robert Foulds is here and Mr Ralph Pugliese. Am I pronouncing the name correctly?

**Mr Ralph Pugliese:** Yes.

**Mr Bernard Grandmaître (Ottawa East):** You're going to have a problem with this.

**Mr Pugliese:** It's everybody else who's going to have to pronounce it.

**The Chair:** I wanted to be sure that I was pronouncing it correctly as opposed to the others who might have had a different pronunciation of your name.

**Mr Pugliese:** Sounds good to me.

**The Chair:** Welcome to this committee. You have half an hour for your presentation. If you would like some feedback from the members, leave as much time as you can at the end of your presentation.

**Mr David Langstaff:** My presentation should take 20 to 25 minutes if I move through it briefly.

**The Chair:** If that is the case, there might only be five minutes, in which case you'll only get one question from the members.

**Mr Langstaff:** I think my brief is fairly clear, sir.

The council of the county of Kent will be making two submissions to the administration of justice committee. This submission deals with open meetings, sale of real estate property and the Local Government Disclosure of

Interest Act, which will be presented by the warden and chief administrative officer. The submission dealing with the proposed amendments to the Planning Act will be presented by the warden and the director of planning.

Proposed legislation regarding open meetings: The procedural bylaw for the council of the county of Kent already provides for open meetings of our committees and our library board save and except for the last item on the agenda referred to as "Matters to be dealt with in camera: personnel, property and litigation."

Basically the existing list in the county procedural bylaw setting out the subjects which may be discussed during the in camera portion of the committee meetings and during an in camera meeting of council meeting in committee of the whole is essentially the same as the list proposed in Bill 163. As a result, council has no concerns with the fact that subjects that may be discussed during a closed meeting are limited to clauses (a) to (g) of subsection (5) and subsection (6) of the proposed new section 55.

There are three issues which the county of Kent wishes to raise. They are as follows:

A concern that the definition of "committee" includes intermunicipal advisory committees: Members of the administration of justice committee are aware that during the past 10 to 15 years neighbouring municipalities, primarily cities that are not part of a county system and the county, have formed intermunicipal liaison committees in order to ensure continuation of improved working relationships. These committees have no authority other than to make recommendations to their respective councils at public meetings unless a particular recommendation falls within the subject matters listed under subsection 55(5).

Kent county wishes to point out that in the vast majority of cases, discussions at the city-county liaison committee level serve a very useful purpose. Often issues brought before the liaison committee involve very direct and frank discussions where an attempt is made to better understand the position of either party on a subject of interest to the entire area. Often these discussions lead to one of the parties expressing a willingness to suggest to its council that it reconsider a position already taken, or at least amend its position on a particular issue now that it has a better understanding of all the ramifications of the decision taken.

It is the county's submission that if the meetings are open to the public, these discussions will not result in a clearing of the air and as a result a better understanding



of what is best for the entire community. Public meetings will force the participants to stick to their position in order to save face before their electorate, and as a result the liaison committee members will not be able to get to the bottom of the issue and reach a compromise which can then be recommended to their respective councils. If the legislation remains as proposed, it is our submission that intermunicipal relationships will suffer since there will not be the current opportunity available to air minor irritants which will over a period of time become major obstacles.

It is recommended that the definition section of proposed section 55 of the Municipal Act be amended to clarify that an intermunicipal advisory committee is authorized to hold a meeting closed to the public for any purpose and take a vote during a closed meeting providing any action resulting from a decision made in the closed portion of a meeting of an intermunicipal advisory body is referred to the respective councils where the subject must be dealt with in accordance with the guidelines set out in proposed section 55 of the Municipal Act.

The second concern, a concern that the inability to take a vote during a closed meeting will limit council's or committee's ability to direct staff: The county of Kent appreciates the fact that the Legislature is attempting to ensure that when the final vote on a subject discussed during a closed meeting is taken, it is conducted in the public portion of the meeting in order that the electorate can determine how each councillor voted.

In fact Kent county under its present procedures does exactly that. If we deal with a property matter in a closed meeting of council meeting in committee of the whole, a vote is taken during the closed meeting, and once staff understands the direction of council in committee as established by the vote in committee, staff prepares a report to council from the committee of the whole with a recommendation. This recommendation is then dealt with in open council and the vote is taken. If we are not allowed to take a vote during the closed portion of committee meetings, it is our submission it will be impossible to direct staff.

We have two examples where we feel it is imperative that a committee of council be allowed to take a vote when a meeting is closed and we are aware that you will be presented with other examples as you travel across the province. Our two examples are as follows:

Our executive committee has been assigned the responsibility of retaining a new clerk-administrator for the county. We will be holding interviews during a closed meeting and making our selection of the preferred candidate during a closed meeting. The warden or secretary of the committee will be required to discuss an offer with the preferred candidate. As warden, I would be reluctant to make an offer unless I have a preliminary vote of the committee directing me to do so. Otherwise I stand the potential to be second-guessed by committee members who may submit I did not understand the body language and innuendoes made during the committee's discussion of the merits of each candidate.

It is our submission that it is necessary to have the

committee vote while the committee is in the closed portion of the meeting in order that the individual making the initial job offer is confident there is sufficient support to do so. Obviously, once the details are worked out, council will in open council vote on the appointment of the individual and the electorate will know the position of council members on the appointment.

Our transportation committee often deals with property purchases for road widening during an in camera portion of the meeting. In situations where the purchase is straightforward, that is, the purchase price is in line with the council's policy, the agreement of purchase and sale is accepted by a vote of the committee and the recommendation goes to the county council where the vote is taken in open council. If council agrees with the recommendation, the agreement is signed by the appropriate officials and the transaction is finalized.

There are situations when the committee discusses the potential for a counteroffer. Often the committee members do not agree on the value of the counteroffer and sometimes there are members who feel that a counteroffer should not be made.

It is our submission that unless a preliminary vote is taken while the committee is meeting in closed session, it will be impossible for a staff member to ascertain if a counteroffer should be made, and if it should, the exact nature of the counteroffer. Obviously, once negotiations result in an agreement, the agreement will be the subject of consideration in open council.

It is recommended that subsection (9) of proposed section 55 be amended to read:

"(9) Despite this section, a meeting shall not be closed during the taking of a vote unless the vote is taken in order to provide officers with direction during the preliminary discussion of the subject matter."

#### 1010

I think the next one is a bit interesting. Lack of opportunity to have a cabinet or a caucus: Kent county council notes that the members of the Ontario Legislature and the members of municipal councils serve exactly the same taxpayers. As stated earlier, we do not object to the proposed legislation which limits issues that may be considered during a meeting or part of a meeting that is closed to the public. In passing, we simply wish to comment that we find it rather hypocritical for a government that has a cabinet with its solidarity and a caucus to clear the air before going public on any particular subject to suggest that municipal government should be more open. This is a double standard.

It is recommended that, in order to ensure that the taxpayers of Ontario can expect all levels of government to deal with issues before government in a similar fashion, the definition of "meeting" under subsection (1) of the proposed section 55 be amended to read:

"'Meeting' means any regular, special, committee or any other meeting of a council or a local board save and except a meeting of its cabinet or its caucus." If the legislation were amended, the county could refer to its executive committee as "cabinet" and to the meetings of council meeting in committee of the whole as "caucus."

Disposal of real property: Kent county currently has a procedure for the sale of real property. Council rarely finds itself in a situation where it has real property which is surplus to the county needs. However, on the occasions when this has arisen, save and except those situations which automatically fall under the provisions of the Municipal Act dealing with road closings and the subsequent disposal of property, council has publicly declared the property surplus to its needs.

We acknowledge that there may be situations where an appraisal of the fair market value of the property is appropriate. However, in situations where a council has publicly declared that the real property surplus to the needs of the municipality will be sold by tender, the council of the county of Kent sees no real purpose served by forcing the municipalities to go to the extra cost involved in obtaining at least one appraisal of the fair market value of the real property when in the opinion of Kent county council the tender process will automatically address this question.

The Local Government Disclosure of Interest Act: The council of the county of Kent is of the opinion that, given there will be a commissioner appointed under the Local Government Disclosure of Interest Act, form 1, the disclosure of financial information form, which is to be completed within 60 days of taking office and updated before December 31 of each year except in an election year, should be filed with the commissioner.

There are four specific reasons for this recommendation and they are:

Kent county council notes that the availability of the financial information form which is to be available for public inspection in the offices of the municipal clerk has the potential to make information regarding innocent bystanders available in a form much more readily available than under existing circumstances. For example, a member of council may hold mortgages on properties in a municipality. Currently individuals must attend at the registry office and pay a fee if they wish to determine if there is a mortgage on their neighbour's property. If a member of council holds the mortgage, individuals may discover this information while reviewing a disclosure of financial information form available in the clerk's office. In the opinion of Kent county council, this is entirely inappropriate.

Kent county council notes that the financial information form must be updated before December 31 of each year except in an election year by filing a supplementary report. We are concerned that, in the event this information is readily available in the offices of the municipal clerk and in the event a business person in a relatively small town or village is involved in municipal government, the requirement that the individual update the information regarding liabilities secured against his or her financial interests in the past year could be very beneficial to a competitor.

Kent county council submits that during times such as the past recession, there could be a number of individuals who, through no fault of their own, are required to increase their liabilities, disclose them in the supplementary report while showing no corresponding increase in

assets. The unintended effect is the release of facts about a particular individual, in this case the difficult financial circumstances being faced by the individual, which has no relevance to the intent of the legislation.

Even though this same information may be available from other sources, an interested individual such as a potential creditor would be required to make a request for the information from a sheriff's office or similar location and take the steps necessary and pay the appropriate fees in order to obtain same. Again in this instance a competitor could obtain this information as an indirect result of an individual reviewing a disclosure of financial information form available in the local municipal clerk's office. You would do well to consider that the indirect result of knowing a person's financial circumstances at a particular point in time is similar to posting the names of welfare recipients in the clerk's office.

Kent county council is concerned that staff who have ready access to this information in situations where staff are affected by decisions of local council, downsizing, strikes etc, may promote the fact that this information is readily available in the municipal offices as a pressure tactic to having certain members of council change their views on the issue before council.

Kent county council hastens to point out that the information filed by the members of the provincial Legislature is not available in the local constituency offices. Presumably members of the Legislature would not want to have this information available to their staff and their electorate. As pointed out earlier in the brief, we serve exactly the same taxpayers. We do not appreciate the double standard and submit that the information form should be filed with the commissioner and available to the public under exactly the same circumstances as members of the provincial Legislature.

MPPs' disclosure forms which contain similar information are filed with the Clerk of the Legislative Assembly, who is referred to as the chief permanent officer of the Legislative Assembly with the rank and status of deputy minister. Obviously the Clerk of the Legislative Assembly does not directly report to the members of the assembly in the same manner as the clerk in a small local municipality. In addition, the information filed by our local MPPs is not readily available to their constituents. Residents in Chatham-Kent and Essex-Kent ridings must set aside an entire day, plus the cost involved in travel to Toronto, to obtain the information regarding their MPPs.

However, under the proposals in Bill 163, these same residents during their lunch hour, or in many small municipalities during their coffee break, will be allowed to view similar information on individuals who serve them in a similar capacity at another level of government. If this accessibility is what we want to achieve, then it's our submission that copies of the disclosure statements filed by MPPs should be available to their staff and the public at their local constituency offices. This will eliminate the double standards that will otherwise exist once Bill 163 is passed.

We thank the committee for the opportunity to appear before you and request that you give the concerns of the county of Kent their consideration and merit.



I'll now go on to the second brief that we have with regard to the Planning Act. The following is the county of Kent's submission on the administration of justice committee on the component of Bill 163 dealing with the proposed changes to the Planning Act.

The amendments to the act are touted by the provincial government as empowering municipalities at the local level. In fact, if one were to consider the changes proposed, one would realize that the empowerment is superficial and the province will have greater and stronger powers than ever to control development at the local/county levels of government.

Section 2 lists the provincial interest matters which the municipalities, the OMB and others must have regard to when carrying out their planning responsibilities. This list has been extended substantially to include a wide array of planning issues in the social, economic and environmental streams, including a provision wherein regard must be had for any other matter prescribed.

Subsection 3(5): All decisions made by all planning authorities, including the OMB, must be consistent with provincial policy.

Subsections 17(45), (46) and (47): Upon an appeal to the OMB, the minister must give 30 days' notice in advance of a hearing on the matter if there is an issue of provincial interest. The OMB decision on the issue of provincial interest is not final until confirmed by the Lieutenant Governor in Council.

Clause 47(1)(a) and subsection 47(2): Where the minister could exercise powers conferred upon council only with respect to subsection 50(4) relating to matters of subdivision of lands, the powers have been extended to include all issues regarding sections 34, 38, 39 and 45, which deal with zoning, interim control, temporary uses and minor variances respectively. Such powers are exercised through orders and are not subject to the normal notification and appeal processes as are the matters under the effected sections.

Subsection 50(1.1) gives the minister the authority, through an order and with stated reasons, to remove the powers of the council of a municipality with respect to granting of consent, a certificate for the validation of title and power of sale for one or more applications. In such instances the minister assumes the same powers initially bestowed upon the municipality.

Section 16.1: A council may follow the prescribed process and develop materials prescribed for the preparation of an official plan, and any of these may be considered under the EA act with respect to any requirement it must meet under the act.

Clause 70.1(e): The minister may prescribe the content of official plans and prescribe different content for different municipalities and different classes of municipalities.

The abovenoted sections in particular give the province and specifically the Minister of Municipal Affairs stronger powers than ever before to control the direction of municipal planning in Ontario. The provisions in subsection 3(5) requiring that the planning decisions be consistent with provincial planning policy are testimony

of this.

When disputes over the interpretation and intent of provincial interest issues are taken to the OMB, the board would seem to have little discretion in making a decision in favour of a position other than that advocated by provincial staff and the minister. The existing concept of "have regard to" is much more in keeping with the goal of integrated provincial planning policy and municipal planning. Thus the existing legislation in this regard should be upheld.

An added assurance that ministerial interpretation will be maintained can be found in subsections 17(45), (46) and (47) of the act, which require the blessing of OMB decisions by the Lieutenant Governor in Council. It would seem that the ministry would have another opportunity to make their case a second time to the Lieutenant Governor if the board ruled against them.

This is provincial veto powers over the board and significantly undermines the integrity and use of the board and the fabric of planning in Ontario. It should be stated that the way it really is is that the minister would have the ultimate power to decide planning issues. This is not characteristic of a democratic process. The Ontario Municipal Board should have the final ruling on any planning matter put before them.

It must be remembered that the minister may force a municipality to address certain matters in their official plan in an official plan acceptable to the minister and in doing so may also refuse to refer matters to the OMB under certain criteria. These provisions are presently found in the existing Planning Act found in subsections 23(1) to (4). New subsections 17(45) to (47) are overkill and place municipalities at an unfair disadvantage.

#### 1020

There seems to be a general and mistaken belief in provincial circles that county planning departments cannot accommodate the official plan and subdivision approvals process.

Section 17 precludes counties from being the approval authority for local official plans and amendments where such counties have approved official plans.

Section 51 precludes counties from having subdivision approval and only allocates these privileges to cities, regions and the county of Oxford. The minister continues to be the approval authority for plans of subdivisions.

I would note in the following section we've made a slight change. It will be different from the presentation that you have in front of you. It's that we've added local official plans to the description.

Counties are being discriminated against in that they are specifically precluded from the authority to grant approvals of local official plans, amendments and plans of subdivisions. Many counties are quite capable of assuming this role. This approach also discriminates against the developer who is prevented from receiving the benefits of having a local approval authority to deal with.

One large benefit in having approvals at the county level is the overall reduction in time and resources from that which is presently required. The omission of counties from this authority is not only discriminating against

counties and their abilities but also serve in prolonging the planning process and thus frustrate efforts in growth and development.

Kent county wishes to have the local official plan and subdivision approval authority and feels that it has the resources and expertise in place to successfully deal with this function once a county official plan is in place. If there is real intent to streamline the planning process, counties should be granted the same privileges as regions and separated cities.

The pressure on public agencies to respond to notices of consideration of consent applications is eliminated, conveying the illusion that it is a fair practice to withhold communication until there is disagreement in a decision of a consent authority and at that point the appeal process is the only alternative.

Subsection 53(28): A public body does not have to make oral or written presentation prior to a decision for consent in order to appeal same. This clause puts a consent authority in the awkward position of not knowing the concerns of a public agency who chooses not to respond until after a decision is rendered. At that point their response would likely be in the form of appeal if the situation cannot be resolved by a change in conditions of the provisional consent. This adds costs and significantly aggravates the planning process and causes frustration among the participants. Public agencies should be required to correspond within the allocated time period. If an appropriate response is not possible within the time period, then a request should be made for an extension to a reasonable time period.

A number of additional procedures serve to lengthen and frustrate the planning process rather than making time periods required for approvals more reasonable.

Clauses 17(16)(a) and (b): In addition to notification having to have been given 30 days in advance of a public meeting to consider an official plan or amendment under subsection 17(10) or an alternative process under subsection 17(11), municipalities are required to allow 30 additional days to lapse prior to giving approval to the official plan or amendment.

Subsection 53(4): Notice of application for consent must be given 30 days before a decision is made.

The 30 additional days required to approve an official plan by council would reduce the flexibility for council and needlessly delay those amendments which are simple and non-controversial. The present process is quite functional in that a council would proceed with an official plan or amendment only when it feels that it has considered all of the issues and is prepared to make a decision. This could come immediately after the public meeting or after a 30-day period. Councils should be left with that flexibility.

Requiring that notice of consent be given 30 days prior to a provisional decision only serves to significantly and needlessly prolong the process. Presently consent authorities have the option of postponing the decision until they are satisfied adequate time has been given for notice beyond 14 days.

Some municipalities, for reasons of cost and minimal

development activity, have not seen the need for an official plan. They have, however, been able to give reasonable flexibility to their zoning bylaw through the privilege of granting minor variances. This route is no longer available to them and must resort to amending their zoning bylaw for minor non-compliance situations.

Subsection 45(5): This section implies that a municipality must have an official plan before variances can be granted from the municipality's zoning bylaw.

This provision makes it awkward for those municipalities who choose not to have an official plan. Their only avenue available to deal with the variance situations is by amending their zoning bylaws, again prolonging the planning process. This is clearly visible in case of very minor variations where there is concurrence and an absence of objection and negative impact.

We hope that we have been of some assistance to you today. In closing, we would like to remind you that the process of planning reform has been a very long and intensive one. Many people have worked very hard to bring their views to the fore. We trust that you will give careful consideration to the impacts of the proposed legislation by considering their benefits and long-term consequences and make the changes that would avoid discrimination against various planning authorities in this province and lengthen the planning process needlessly. Only in this way can relations between the provincial and local government be strengthened to serve the needs of the people of Ontario. Thank you.

**The Chair:** Thank you very much. We don't have much time actually. Mr Hayes, however, does want to make some points of clarification on some of the items that you've raised.

**Mr Pat Hayes (Essex-Kent):** In talking about subsection 45(5), Dave, where you mentioned about, "This section implies that a municipality must have an official plan before variances can be granted from the municipality's zoning bylaw," it doesn't have to be that way. They can grant variances. I just wanted to make that one point.

The other point is that when you talk about being treated the same as some of the regions where they have the right to okay official plans and amendments, counties can have that right too, if they have the official plan and meet the criteria, the same as the regions do.

**Mr Langstaff:** I don't believe that was clear to us in the act as we read it, Mr Hayes.

**The Chair:** Okay. Mr Eddy, I have a concern here.

**Mr Ron Eddy (Brant-Haldimand):** I just have a statement. I don't have a question.

**The Chair:** If you have a statement that is brief, that's fine.

**Mr Eddy:** Yes, that's all it is, Mr Chair.

Thank very much for your brief. I really appreciate the time you spent on this and the important matters that you've brought forward for our consideration, because there are some new items in here.

I want to apologize to you for not having enough time to deal with each of these in a separate time frame. In other words, we should have had a half an hour for each



of them because you've raised some important things. I can only hope that the government's proposed amendments coming forth will address some of these concerns. I take particular note in your comparison to the operation of municipal council with a provincial government with its caucus and its cabinet.

I must say, you've pointed out some of the problems, but I think you haven't gone far enough because, in my experience, I have seen one-man rule where the Premier of the province—and I'm thinking of the establishment of county school boards—

*Interjections.*

**Mr Eddy:** —went ahead without the knowledge even of the Minister of Education and thrust it on the people of Ontario.

**Mr Hayes:** Are you talking about David Peterson?

**Mr Eddy:** No.

*Interjections.*

**The Chair:** Order, please. Mr McLean.

**Mr Allan K. McLean (Simcoe East):** Mr Langstaff, I appreciate the comments in your brief. It is very clear what you've said. It didn't leave room for a lot of questions because you made it clear. I want to say that the number of briefs that we have had from wardens and from counties has been tremendous and the input that they have has certainly given us a little different view than what we're reading in some of the correspondence we got from the ministry. I hope that the ministry is listening and taking into account what you're saying. Thank you for being here.

**Ms Christel Haeck (St Catharines-Brock):** Thank you very much. I also took note of a lot of your comments, but I did want to make a slightly different comment, which is very much the reverse of what Mr Eddy has made, with regard to the conflict-of-interest statements that we have to fulfil. I can assure you that the press looks at these very carefully within days of their having been made available from the conflict-of-interest judge.

I know that in light of their interest—and my name's appeared in the Toronto Sun on two occasions because of a small local investment that I have.

**Mr Cameron Jackson (Burlington South):** What page?

**Ms Haeck:** I couldn't even remember. I couldn't even remember.

**Mr Jackson:** Well, it didn't help Peter Kormos one bit.

**Ms Haeck:** That's right. But in any case—

**The Chair:** Order, please.

**Ms Haeck:** In any case I would suggest to you that the kind of worry that you have, our documents are very much available to the public, like what we're asking municipal councils to do or county councils to do. It would be simply a matter of filling in where you have an obligation with no amounts in place.

In turn, what appears for the press to peruse and for our public to peruse is simply where we may have a

mortgage. It does not indicate any amounts. It only indicates that there is an obligation. It does not in fact give someone else an undue advantage over someone else. It's just to in fact inform all and sundry that yes, I owe money on my car. Beyond that, no one knows how much it happens to be. So I think you should feel certain that no one's trying to outdo anyone else in this.

**Mr Langstaff:** Can I reply to that, sir? Our concern is the type of thing where I, as a councillor, might own some mortgages within my municipality and, if you lived in my municipality, you might be one of them. You might not want—

*Interjections.*

**The Chair:** Order, please. No, please go on.

**Mr Langstaff:** The way we understand it is that we would have to list those mortgages. Now maybe we are wrong on that and, if we are, we would just like the clarification because that is the type of thing that we are concerned about.

**Ms Haeck:** I'll turn it over. Maybe Mr Hayes would like to clarify this point.

**Mr Jackson:** It's not property specific.

*Interjections.*

**The Chair:** Hold on, please. It's not useful for this to be happening. I'm sorry, Mr Langstaff. Did you finish your comments?

**Mr Langstaff:** I'll close at that, sir.

**The Chair:** All right. Is there a ministry staff who wants to comment? Mr Hayes.

**Mr Hayes:** Mr Langstaff is correct in what he's saying. That's supposed to be up front, yes. You have to list your mortgages.

**The Chair:** Okay. We've run out of time, at least for this deputation. We appreciate the submission you have made to this committee. Thank you for taking the time to come.

**Mr Langstaff:** We certainly appreciate being able to make the submission and thank you for hearing us.

**Mr Pugliese:** Mr Chairman, just in closing, if you would like to take a look at subsection 17(3) of the proposed legislation vis-à-vis approval authorities, it doesn't mention counties in there.

**The Chair:** Okay. Thank you.

*Interjections.*

**The Chair:** I want to check to see whether the county of Lambton is here, Mr Malcolm Boyd, Ms Mary Jane Marsh. Okay. We're obviously early for that next submission. I presume Chatham-Kent Home Builders' Association isn't here. Okay. What we'll do is to recess in the meantime.

**Mr Jackson:** Did you inquire is anybody here ready for today? Because there may be an afternoon one who's ready.

**The Chair:** This is true. Is there anyone here in the audience who has a submission to make to us and would like to come forward? No. All right. This committee will recess until 11 o'clock or until somebody shows up.

**Mr Eddy:** Mr Chair, I propose that we bring the Kent

county delegation back and have some questions.

**The Chair:** We will recess until 11 or until the time that the county of Lambton shows up.

*The committee recessed from 1034 to 1101.*

#### COUNTY OF LAMBTON

**The Chair:** I welcome the county of Lambton, Mr Malcolm Boyd and Ms Mary Jane Marsh. You have half an hour for your presentation.

**Ms Mary Jane Marsh:** Thank you. I'm pleased to be here to make this presentation. We will be making a presentation on not only Planning Act amendments but also the conflict-of-interest legislation part.

The county of Lambton responded to the Sewell commission and to the minister on the final report of the Sewell commission. The county expressed the view that the recommendations did not add to local decision-making, which was stated to be one of the goals of the commission. The commission made a large number of recommendations, both in changes to the act and in the proposed policy statements, which would inevitably lead to centralized control of planning throughout the province.

The insistence by the government that all municipal planning decisions "be consistent with" provincial policy rather than "have regard to" provincial policy, regardless of statements in local official plans, will ensure that meaningful community involvement in planning decisions will be undermined and provincial civil servants will be in a position to dictate policies to elected municipal councils.

The province has imposed a highly centralized provincial policy-making framework at the expense of decision-making powers of counties and member municipalities. Lambton county was convinced that many of the recommendations of the Sewell commission would cause local planning documents to become mere mirror images of detailed provincial policy, regardless of its relevance to that community. This government appears to have endorsed the Sewell vision that any semblance of a partnership in planning between the province and municipalities be ended.

Virtually all of the comments which the county submitted on the Sewell commission final report were ignored by the government, including the county's support of the commission recommendations on sewage treatment and septic, which the county feels would have gone a long way to dealing with existing environmental problems. Therefore, there is likely little to be gained by repeating those concerns and this brief will only deal with a few specifics.

Under section 4 one of the stated purposes of the act is that it is to provide for a land use planning system led by provincial policy, and no mention is made of facilitating a more meaningful decision-making process at the municipal and community level. At least the government is up front in stating that the planning process will be from the top down. We know that this will not work, that basic planning must involve the people of the community, the grass roots.

The bill and the policy statements must be revised to

only require that local councils "have regard for" provincial policy. We do not see that the current wording of the Planning Act needs changing. The reasonable implementation of provincial policy shall be determined by the OMB in times of conflict. The bill will prevent the board from being reasonable. They will have to implement provincial policy, as augmented by detailed guidelines which are to come, regardless of whether it makes sense in a local area or is accepted by the local people.

Under section 14 the Sewell commission did not in any way recommend the establishment of joint planning in the manner adopted by the government. The government approach is completely unacceptable, not only because it could wreak havoc in a number of counties, but it would set a precedent for provincial government intervention into the essential power of a county council to set the levy to cover expenses of the county.

This section permits the minister to authorize, without county approval, two or more municipalities, including separated cities, in the same county or different counties to join together for planning purposes and be completely free from paying any portion of the county levy for planning. Subsection 14.7(2) will remove any powers from a county to control or influence anything of a planning nature in the joint planning area. This will cause a great deal of damage to a county's ability to plan for growth and development at a broader level.

This is a huge intrusion into the integrity of county government decision-making. This is a direct attack on a county's ability to provide standardized service levels. Providing the legal mechanism to let municipalities opt out of paying for county planning could be followed by mechanisms to opt out of county roads programs or county libraries. Counties must vigorously oppose legislation which could make it impossible for a county to provide a county-wide service and will affect how a county levy is distributed. Likely the municipalities wishing to opt out will be the more populous and affluent. That will make area planning even more difficult for those who are left.

Lambton county would prefer that the act require that all counties undertake planning. That was made a requirement for regions, and area-wide planning issues also exist for counties. All upper tiers should be required to plan. That would eliminate the need for section 14.

If the province is not willing to take this step, then it should provide that section 14 does not apply to any counties prescribed under section 17, counties which must have an official plan. How could a county undertake an official plan if it could not cover those municipalities which were doing joint planning on their own?

All counties with existing approved official plans should be prescribed. Those counties and any county which completes an official plan within five years of passage of the amendments should be exempt from the application of section 14. This would likely provide an incentive for some counties to undertake planning. No other incentive to undertake county planning exists in the bill.

The bill must be revised to require that there be a motion of consent from any affected county before the



establishment of a joint planning area which will be able to opt out of county planning. The Legislature must make changes to section 14 or it could become a governance issue between the government and counties.

Lambton county understands the difficulties in establishing a county presence in planning which can be effective and at the same time trusted by the member municipal councils. The provincial approach to ensure at least a minimum level of cooperation is wrong; it has gone too far. It could encourage any municipality which was dissatisfied with county planning, for whatever reason and over even a short time period, to obtain the support of a neighbour and apply for their own planning authority, exempting them completely from the county.

Subsection 17(3) gives the power to regional municipalities with existing official plans to approve local official plans. Counties are not given this opportunity—simply because they are not regions? Counties with planning departments and existing official plans must be given the same opportunities as regions to approve local planning documents in order to avoid further discrimination against counties.

1110

Subsection 17(19) provides that the provincial bureaucracy can refuse to consider an amendment if, in their opinion, the application is incomplete. There is no appeal. This places unwarranted and unacceptable control with the bureaucracy. An appeal mechanism must be established if an approval agency refuses to consider a plan or an amendment.

Subsection 17(29) permits the provincial bureaucracy to refuse to refer all or part of a proposed decision to the OMB. The bill, subsection (30), must be amended to provide that clause (29)(a) does not apply to a public body.

Section 51, approval authority for plans of subdivision: In the implementation report of 1990, which dealt with restructuring the county of Lambton and the city of Sarnia, it was agreed that the province should immediately delegate all approvals for subdivisions and condominiums to the county. Successive requests have been ignored, even though there was local agreement and the county had an approved official plan and experienced professional staff.

Section 51 proposes that any city within a county will obtain subdivision approvals but that all other municipalities in that county will have to continue to seek approvals in Toronto. Metro Toronto will not have the same powers as other regions. This just does not make sense. What is this government trying to say to Metro and all counties? All counties with existing official plans and all counties which enact official plans must be given the powers to approve official plans. Any further delegation to cities or to any municipalities within a county should be decided within a county, not mandated by the province.

In summary, the county of Lambton is convinced that the proposed Planning Act changes, when combined with the enforcement of the new, comprehensive provincial planning policies, will make planning at a local level a

relatively meaningless exercise. The government intends to set up a top-down planning system in Ontario. The changes recommended in this brief will somewhat mute the adverse impact on all counties in the province.

Lambton county has recently restructured in a manner similar to Oxford county, except that the smaller municipalities were retained. The upper tier was greatly strengthened. Lambton county has had an approved official plan in place since 1980 and has shown a commitment to careful area-wide planning. Lambton county, and other counties which show a commitment to change, should be able to take advantage of all of the policies which have been made available to the regions and Oxford county.

Lambton county also supports the detailed recommendations of AMO on the bill, as the county has agreed with most of the AMO positions of this government's attempts at Planning Act reform.

Do you want me to go right into the local government disclosure of interest issues?

**The Chair:** Yes, please do.

**Ms Marsh:** All right.

Lambton county continues to have strong reservations with some of the provisions contained within the Local Government Disclosure of Interest Act, 1994. In general, we have supported the recommendations made by AMO throughout the process of revision of the legislation. There are, however, some specific concerns which the county would like to discuss.

Specifically, the county of Lambton urges the province to consider adoption of the Manitoba model as it relates to the release of financial disclosure statements. As you may be aware, this model adopts a gatekeeper's philosophy. In other words, the financial statements are not routinely released or made available to the public for its inspection. Rather, specific inquiries regarding potential conflict must be made to the clerk in writing and the clerk must then respond in kind. Such an approach, the county believes, strikes a good balance between the privacy rights of the elected officials and the public's right to integrity and accountability in its politicians.

Lambton county also feels strongly that the defence of bona fide error should be maintained. Local politicians are only politicians on a part-time basis. They do not have access to the same sophisticated resources which the provincial and federal politicians do in order to ascertain whether or not their actions are in conflict with legislation. Even with such access to resources, it is still possible, as a cabinet minister for the Premier recently discovered, to run afoul of the legislation. Where a politician has attempted to comply with the legislation but has made a bona fide error, such should be a full defence in the event that charges are laid.

Related to the preceding point, Lambton county feels strongly that the commissioner, or someone in a similar position, should be available to provide counselling for members who wish to operate within the framework of the legislation and need advice in so doing. Many local politicians do not have access to the necessary resources, either legal or financial, which could prevent them from

running afoul of the legislation. An accessible pool of expertise in the commissioner's office could greatly alleviate much of the guesswork on the part of those unable to find or to afford qualified help.

Lambton county is also concerned about the waste of resources. All municipalities are creatures of provincial statute. As the province has already established its own provincial commission, why must the same be established for municipalities created by the province? Both provincial and municipal politicians are elected pursuant to provincial laws. It seems to make sense that financial statements for both should be filed in the same office, for to do so would surely save resources.

Regarding the conduct of in camera meetings, the county is proud to note that its current procedural bylaw already complies with the changes proposed by the ministry. The county remains concerned, however, that the province not define too narrowly the list of issues which may be discussed in camera or restrict too tightly how or when such information may be released.

Finally, the county notes that there has been much discussion as of late regarding slander and libel suits against municipal politicians. There are several cases currently before the courts in other regions of the province. As well, the cases heard to date seem to contradict each other as there are little or no guidelines for the courts to follow. The county is accordingly concerned and urges the province to consider adopting provisions which would define and provide for the same level of privilege currently afforded to provincial members of Parliament.

That is our submission from Lambton county.

**Mr McLean:** I'd like to go back where you talk about the commission's recommendations on sewage and treatment and septic tanks. The Sewell commission had made some of those recommendations in their report and there's nothing in Bill 163 really that relates to that. The concern you have is that, I guess you feel it should have been in the report where they'd have to be looked at every five years or something?

**Ms Marsh:** I have to refresh my memory here myself.

**Mr McLean:** I think that's what the Sewell report wanted.

**Ms Marsh:** Yes, they did. They did ask for a five-year inspection and there were other concerns with septics. Septics have been left out completely and Lambton county now administers the septic program rather than the MOE or rather than the board of health in Lambton, so we do have concerns that septics were left out of Bill 163.

**Mr McLean:** Yes, I see that by your comments and I was wondering if your feeling was that they should have been left in. Obviously, you're saying yes.

**Ms Marsh:** Yes.

**Mr McLean:** Thank you. The other issue was subsection 17(19): "Provides that the provincial bureaucracy can refuse to consider an amendment if, in their opinion, the application is incomplete. There is no appeal. This places unwarranted and unacceptable control with the bureaucracy. An appeal mechanism must be established..."

What type of an appeal mechanism would you like to see put in there, if an approval agency refuses to consider a plan of amendment?

**Ms Marsh:** Could I ask the planning director, Mr Boyd, to comment?

**Mr Malcolm Boyd:** The approval agency could well be an upper tier, so it's not just the province that this is concerned about. It could be an upper tier acting unreasonably as well. I think the appropriate place for that to go would be the board. I think the OMB is set up to deal with issues of equity and common sense and they're very good at what they do, so the proposal would be that that would provide for an appeal to the board. Otherwise, these things can get stuck for ever in a bureaucracy because they don't like the proposal and they can say, "Well, you haven't done enough studies. You have to do this study, that study," and they can grind you down, and at a certain point enough's enough and send it to the board.

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**Mr McLean:** The other areas, when Lambton and Sarnia were amalgamated, or I guess was it part of Clearwater that was going into part of Sarnia, the agreement was that the county would do the approvals. Was that a recommendation made by the ministry, that it would be the county that would do it? Obviously they never allowed you to fulfil that.

**Mr Boyd:** It came from a joint working group that had support from the ministry staff. The ministry staff were a support group. The irony here of course is that this bill will give the city the delegated power and no one else, and it just makes no sense in our jurisdiction where the city is part of the county.

**Mr McLean:** Why didn't they let you proceed with the approvals? Was it the ministry then that stopped you from proceeding?

**Mr Boyd:** Yes, it was ministry staff. Ministry staff don't like our official plan. They feel our official plan is outdated, and we don't understand frankly. It's an argument we've had with ministry staff. Our plan is the same age as Oxford's and as Huron's. Ours is a policy plan. They don't think it's detailed enough, but we feel it works well. We have complete official plan coverage from the lower tier. There's a model that the ministry staff didn't like and they've just never given us the approval.

**Mr McLean:** Would you say you were left out in the cold or left out in the heat, or just left out?

**Mr Boyd:** Just left out.

**Mr Grandmaitre:** Depends on the season.

**Mr Eddy:** The agreement wasn't fulfilled.

**Mr McLean:** We understand that, Ron.

The other question I had had to do with the powers. You talked in your brief about the powers that Oxford and the regions have and that the county should also have the same powers, which I agree with, and that's what you're asking for. But I'm afraid that it may not happen, and obviously from your brief you're having some concerns about it too.



**Ms Marsh:** That's right.

**Mr McLean:** What do you think we should do to make it happen? I mean, we've discussed it with some of the ministry staff and I think they're saying yes, the county should have it. But what I'm saying is, what are the criteria laid out so that the counties know what they have to do in order to have that approval process that they've so badly wanted?

**Mr Boyd:** The biggest problem, of course, the province has is that there are counties and there are counties. We understand that there are counties that really don't function as counties and that there are counties that do. All I can say in our criteria we have restructured and we have an official plan, and I would think that should be enough.

**Ms Margaret H. Harrington (Niagara Falls):** The first part of your brief, which is on the Planning Act amendments, stated that you do not believe that the local decision-making is enhanced. I would like to start out by saying that we believe, as a government, that the planning process across this province has not been a good process for many years and that it's certainly time that it was changed, and the principles on which we base the change are to give the municipalities more authority. I will ask the parliamentary assistant to clarify that more to give you the actual details about that.

We also wanted to be more efficient, to cut red tape, and I think that would be of benefit to everyone in Ontario. But it has to be based on sound principles, which are the principles that we have in our policy statements, that have to be consistent right across this province. I'd like you to try and think in those terms, that this is important to the people of the province as well, that they are interpreted locally but they are clear and consistent right across this province.

The other thing that's very important in this new process is participation by the citizens. I would hope that every municipality would have advisory groups that will come into the process and yet not slow that process down. So communication is very important between the citizens and the politicians as the planning process goes forward. At this point I'd like to ask the parliamentary assistant to explain to you how this does in effect give you more decision-making power.

*Interjection.*

**Mr Hayes:** I'm always a lot briefer than many other politicians. First of all, I would like to get a little bit of clarification from the delegation because section 4 right now in the existing act allows counties to be delegated. In the earlier presentation, I said it doesn't show in 163 because it's already in that other section and we are looking favourably on amendments to deal with that area.

You can correct me if I'm wrong, but I understand that your official plan is dated 1980. There haven't been any updates in that. Do you feel that you would meet the criteria today—that's one question—under 163? What is being said here is that there is an agreement, and I'm not questioning that at all, but what is the condition that the ministry is saying that you do not meet to be able to be delegated?

**Mr Boyd:** There have been changes of—

*Interruption.*

**Mr Jackson:** There's Ellen MacKinnon on the phone right now.

**The Chair:** Mr Boyd, please continue.

**Mr Boyd:** There have been changes in provincial administration of that part of the existing act. It swings back and forth. At the time the Sarnia-Lambton agreement came, there was a push on from higher up in the provincial staff to down-delegate because they were swamped. Then the issue with Grey county came in and all approvals were stopped. Now they've come on again, and they're inconsistent. I understand that some counties down east, Victoria and Prince Edward, have been delegated. There's no consistency. My sense is that it should be, if you have an approved official plan, that's it.

Now the province is saying it's got to have an approved official plan, the provincial staff is saying there's got to be an approved official plan incorporating all of our policy statements, and we don't understand why that makes any difference because you're not requiring that of regions. You're letting regions with old official plans have delegation. Why can't you do it to counties? We just don't understand the inconsistency of staff.

**The Chair:** We're running out of time, Mr Hayes, because we have the opposition as well.

**Mr Hayes:** All I'm saying is that—

*Interjection.*

**Mr Hayes:** Well, you can call it discrimination.

**Mr Eddy:** They're being treated differently.

**Mr Hayes:** You can do whatever you want, but we're in the process of changing discrimination that's been there for many years.

First of all, what we're saying here is that hopefully the whole idea of having this reform in planning is because of a lot of the problems that we've had in the past and in the present where things have been inconsistent. I think if I was still a municipal politician, I would certainly want to have provincial policies clear, which they're going to be, and guidelines where municipalities can plan properly and one area will not be treated different than the other area just because they're a region, a city or a county. That's why we're here today, and we'll be cleaning up some of these things.

**Ms Marsh:** We would agree with you, except for the exceptions that we've mentioned.

**Mr Grandmaître:** I agree with the member for Niagara Falls that it is a complicated system and the intention of the government was to improve the system, but what the government has failed to do is to recognize what real counties have done in the past.

Those who have, let's say, observed the planning laws of this province, inadequate or not, have respected the demand of the government, but now we're changing the roles of not only regions but also counties. What the counties are telling us and have been telling us for the last three or four days is that it won't work: "You want to create a partnership but you're leaving us out." It's

planning from the top down. You may not agree with me.  
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Maybe I can ask the parliamentary assistant, in Mr Sewell's considerations and when he met with the different groups for the last two and a half years, what consideration did Mr Sewell give to counties that were respecting the existing planning laws?

**The Chair:** That's one question. Mr Eddy, do you want to add a point or a question, so we do that all at once, because there isn't much time left.

**Mr Eddy:** No, go ahead.

**Mr Grandmaître:** Can I get an answer for my question?

**The Chair:** All right, but just as a reminder that after that we may not have much more time left.

**Mr Grandmaître:** Well, tell the parliamentary assistant to be precise.

**The Chair:** He's usually precise and short.

**Mr Hayes:** Have you got the question?

**Mr Grandmaître:** That's it, that's my question.

**Mr Hayes:** Mr Sewell certainly wants this to be a policy-driven piece of legislation.

**Mr Grandmaître:** Right on.

**Mr Hayes:** That's what he wants to do, and also give the power to the upper-tier municipalities, and that's what we're working on.

**Mr Eddy:** Your worship Warden Marsh, thank you for bringing forward this brief. One point I wanted to make was, the wording "be consistent with" is a big change, but we're told it is flexible, and what was considered were the words "shall conform to," which are much stronger. We're told that "be consistent with" is middle ground and it's more flexible.

Now it's up to you to get that explanation from the ministry because you have pointed out that it isn't—I agree completely with your views on joint planning. I'm really concerned about the agreement. If there ever is a county in Ontario that should have the delegation authority of approval, it's Lambton, because you are a region. You're not restructured, but you are partially. The town of Clearwater was added to the separated city. The separated city was brought into the county. You reallocated the services. In effect, you are a region, and it's discrimination. Did you write to the minister and ask for the delegation authority, and do you have a response and what does it say, and may I have a copy of it?

**Ms Marsh:** We wrote many times.

**The Chair:** I'm sorry. There's no more time.

**Mr Eddy:** Oh, I've finished.

**Ms Marsh:** You don't want an answer?

**Mr Eddy:** Yes. We just wasted half an hour, so we've got time for your answer.

**Ms Marsh:** We asked for that authority many times. The answer back, I believe, was always no, but I don't know the background.

**Mr Boyd:** The latest answer back has been it was pending Planning Act review.

**Mr Eddy:** Your fear of bureaucracy is well founded.

**The Chair:** Ms Marsh and Mr Boyd, we thank you for taking the time to come and thank you for the presentation you made to this committee.

**Ms Marsh:** Thank you for hearing us.

CHATHAM KENT HOME BUILDERS' ASSOCIATION

**The Chair:** We invite Chatham Kent Home Builders' Association, Mr Gilles Michaud and Mr Henry Regts.

**Mr Henry Regts:** Madam Chairman, ladies and gentlemen, I want to thank you for the opportunity allowing us to make this presentation to you this morning. I'm making this presentation as a member of the Chatham Kent Home Builders' Association, of which I'm a past president. I will be referring to my notes and reading it for the most part, but I'll also do it off the hip a little bit, if you don't mind. I also have with me Mr Gilles Michaud, who's currently the president of the Chatham Kent Home Builders' Association.

We're making this presentation to you out of concern that while the objective—I'm only addressing basically the matter of streamlining the Planning Act as it applies to land developers and builders. I know there's lots more in the Planning Act that we could be addressing or lots more in Bill 163 that I could be addressing, but we try to concern ourselves with those items that have to do with the land development industry. I'm concerned that even when we go through this process of Bill 163, if it's totally adopted as presented, we'll have an even more complex act than we had before and that the result will not be obtained, that is, of streamlining the process.

Now I'm making these comments, but I do want to give you a little personal history about myself. I'm a consulting civil engineer who has specialized in land development matters and official plan amendment zoning changes etc for almost 30 years. I'm currently a member of the Chatham Kent Home Builders' Association, I'm one of its past presidents, a former member of the Ontario Home Builders' Association, a member of the land development committee of that association for many years, and have acted as a consultant for land developers and have developed land on our own since about 1974.

I graduated from the University of Windsor and worked in that area for almost 10 years and was involved in the first official plan done for a county, by the way, which was the Essex county official plan, I believe. The company I worked for was G.V. Kleinfeldt and Associates, engineers, planners. I worked for them, and they produced that first plan. I was very much involved in the engineering aspect of that plan. Our company at the same time did the Huron official plan. I know that's outdated and been replaced since that time, but to give you an indication that I am aware of what planning's about and what official plans are about.

I've also served on planning boards. I served on a planning board of the town of Essex in 1966 and served in Chatham here on council. I'm on council presently, but I also served on LACAC committee prior to that. I'm not trying to pull rank or anything, but if I didn't tell you I was on council, you might say, "Well, there's a conflict of interest right there you didn't tell us about." I don't



think this is a conflict of interest. It's saying that I have a real keen interest in community development, in home building, and that's why I'm here.

Mr Michaud is also a member of the Ontario Home Builders' Association, and we have a professional code of ethics that we adhere to that we sign as members of that association. Over the past 20 years, I'm talking about since 1974, in Essex-Kent we have not seen any major development failures in our community that had a serious impact on home buyers whatsoever. I know Mr Hayes is from our community. He can probably attest to that in Chatham-Kent and Essex county. We haven't had any major failures of any kind, so that the system that has been in place has worked, although it has been very, very slow.

We also support the Ontario New Home Warranty Program, which is really for the protection of the consumer, more so than the builder, I think, as we all agree that know anything about it. Now, also the home builders maintain that they are the only ones speaking for the new home buyer and they're the only ones there promoting a new development, a new housing scheme or whatever. The new home buyer obviously isn't there because he hasn't got an interest in that place just yet.

Our organization, which is the Ontario Home Builders' Association, which we are a part of, has had many, many meetings with the Ministry of Housing, the Ministry of Municipal Affairs, Mr Sewell and other organizations, and I think we're in favour of changes. I think you've heard us push for changes and we want to see changes. We would hope that these changes and guidelines would speed up the land development approval process, but we're very concerned there are some things there that will not speed it up but in actual fact will delay it. This is why we want to bring it to your attention here as well.

I'm not going to review this stack of documents I've got here with me, but I believe that you probably have a copy of the Ontario planning reform submission by the Ontario Home Builders' Association. If you haven't got it yet, you'll get it, and I didn't make 30 copies of it for you. But in addition to that the home builders do, you know, look at the guidelines and try to adhere to those streamlining guidelines.

New planning for Ontario, land use planning for housing, I think we're familiar with guidelines and we are prepared to accept proper guidelines for the development for our industry, which we think will be for the benefit of our communities.

I've said all of that, really, to let you know, and I think you people do know, that planning and housing matters have tended to become very, very complex and complicated and are interconnected to all kinds of other things. You do this thing here and you upset something else.

I'm not telling you anything new here, but please, what I'm here for, for one other thing, is that the policies that may be great for one particular area, for northern Ontario, may not work well for southwestern Ontario. If it's Toronto—Chatham is only 40,000 people plus or minus. Those policies that work well in one area, you can't force down the throats of some area.

Please, when you listen to the county of Lambton, their situation's even different from the county of Kent and it's different from the county of Essex. I know that we have to have general rules in Ontario; I'm in favour of that. But please, one thing you'll hear over and over again from those of us who don't live in the Toronto region is, "Please don't give us Toronto solutions to our problems."

I say the same thing when I meet with the Ontario Home Builders' Association, when they have problems. Their problems are not our problems. Their problems are trying to keep up with building 100,000 homes. We've never had that problem around here.

Also, it's been my experience over the last 30 years that the larger the city, the greater the complexity. I don't think I have to belabour that; you would agree with that.

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Also I'd like you to know that in the Chatham-Kent-Essex area, we've been able to maintain low land prices. Our land prices are in the order of \$500 to \$600 to \$700 a front foot for lot. If you go to Stratford, you go to London, you go to anywhere else, you're talking double those land prices, so we must be doing something right to maintain those prices. Also something has happened to us. We've had a major recession here in 1980, and I don't think we've fully recovered from that. If things are really booming here, I think our land prices would be substantially higher too.

Anyhow, I believe that, having worked with the municipalities from Windsor to Chatham to some in Lambton as well, the people have tended to be reasonable. Our major problems seem to be beyond the region, although we have problems in there as well.

I believe the revisions as proposed in Bill 163 do very little to reduce housing costs and, in fact, they do more to increase costs and I'm very concerned about that.

I had an opportunity to speak to Mr Hayes just briefly. I didn't know he was going to here this morning, but I've attached, in the appendix, an article. I share Mr Hayes's opinion that he's hoping this process would speed up the land development process. I'm 100% in favour of Mr Hayes, as you very well know, and if it doesn't happen, I'm going to be on your back and a few other people's backs as well, I suppose.

Furthermore, the government action on affordable housing in our area indicates that the Ministry of Housing is talking about financing an additional 50 to 100 homes in the Chatham area that I'm talking about. There's another attachment you have at the tail-end, a letter of mine to Mr Randy Hope indicating that we had over 64 ads in our paper indicating apartments for rent, probably in the order of 200 apartments. The last thing we need in our community is an additional 100 geared-to-income rental units when we have this kind of vacancy rate. We've been running 16% to 25% vacancy rate, contrary to what you heard from CMHC, about 3% or 4%.

We're concerned that that is not the answer to the housing situation. I've a son in the building business and Mr Michaud is in the building business. Our homes start here at \$95,000 and up, and you can get a quality home for \$115,000. If you take a trip around our city, I think

you'll see what's available here at very reasonable prices. You can read the rest that I've written there, that in the rental industry right now, apartments just are not saleable at all because of rent controls etc.

But our main objective in seeking official plan amendments, zoning changes etc is really to put housing on the market, and housing that people want to buy and can afford. In our area I indicated to you that the prices, like \$95,000 and up, get you a quality three-bedroom home.

Furthermore, I'd like you to know that the Ontario Home Builders' Association, if they haven't already made a presentation to you, have something like 3,600 to 4,000 members employing something like 60,000 or more people. When you use a multiplication factor there that probably translates into more like 240,000 jobs.

So I'm here to say that the Chatham Kent Home Builders' Association as well as the Ontario Home Builders' Association need your support, need Ontario government support and need your listening ear to be able to produce affordable housing. Mine is therefore the plea that you will listen to specific requests for amendments as made by the Ontario Home Builders' Association and supported by our association.

The total brief I think you already have, but I've just handed to you pages 25 to 31, which indicate some of the major changes that we feel should be addressed and we would like you to hear us on—particularly page 26, section 6 is in the material that I attached to the lot I've given you. I heard talk about sustainable economic development and we feel that that concept should be defined or deleted.

There are specific references here to the Planning Act changes, and I don't know how much time I've got to go through those specifics or not, but those are the specific ones that I think are very important to our industry. How much time have I got, Madam Chairman?

**The Vice-Chair (Ms Margaret H. Harrington):** You have until 12 o'clock. It's up to you how much of that time you want to use, but please keep in mind that each of the parties would like to ask you questions.

**Mr Regts:** If I might, I would like to suggest that if you turn to the attachment that I gave to my letter, page 25, on the bottom of page 25 it talks about provincial interests. Obviously not every provincial interest is articulated as policy.

If you skip right down to the bottom of the page it says: "Provincial interests listed in legislation enjoy special status because they have been duly considered by elected officials," and I think that's rightfully so. Other things that are in policy guidelines that haven't been considered by elected officials should not have the same status.

On page 26, section 6, regarding subsection 3(5) of the act, it says, "shall be consistent with." You heard other presentations this morning. We feel that the proposed amendment, "shall be consistent with," should be deleted. We don't think it's beneficial to our industry.

Regarding approval of the official plans, on the bottom of page 26, subsection 17(16), we think there are going to be more delays in getting official plan amendments

approved. If the approving body, such as the county or the city, can't make that decision within a week or even at that public meeting, why another 30 days to make a decision? If all the presentations have been made and council's ready to make a decision, let it make a decision rather than waiting 30 days.

Furthermore, the approval authority in this, if I'm speaking county or city, should have discretion as to who receives notification. We feel that speaks for itself.

Subsection 17(24), on the top of page 27, says, "Persons do not need 30 days to decide to ask for a referral. The time frame should be shortened to prevent unnecessary delays."

Over 30 years I've gone through many of these, which I consider vexatious and frivolous, but I've talked to Mrs Helen Cooper of the OMB, and she doesn't know what the definition is for that, and neither does anybody else. Yet I think there are frivolous and vexatious objections that should be dealt with immediately.

Subsection 17(29): Giving the approval authority the power to refuse to refer a decision to the OMB is a bit like allowing the catcher to call balls and strikes. Please, if the developer feels it should be referred to the OMB, why should anyone deny the developer that right, or the builder in this case?

More problematic, if something is determined premature, why not let it go to hearing to decide whether it really is premature? I have so often heard the word "premature" when that's just another way of delaying something rather than really dealing with it.

Public bodies are largely responsible for delays in the current approval process. I think we found that in our city, that it's not so much our local authorities as others that have held us up. That's not a general rule, but we are very concerned that greater delays, greater time factors, greater costs.

Subsection 17(40), page 28: If the board is rejecting an appeal because, for example, it believes the appeal is intended to delay or is frivolous and vexatious, a time frame should be set for notifying the appellant and allowing representation. The time frame should be 15 days for notice and 15 days to make representation.

This has been a real problem for us in the past. Oftentimes these zoning objections come in at the 11th hour, and now with fax machines we've had it where they come in late and still they came on the date of objection and they are being considered. Even though they're late and the OMB has new rules, they're being considered as an appeal. We feel there should be some better rules than that to take care of that matter.

Skipping down to section 14, re subsection 22(1): The time frame to hold a public meeting within 180 days is too long, given that a decision on the OPA must be made within 180 days. The time frame for a public meeting should be shorter.

I support that idea, that the time is very much of a cost factor here and anything that can be done to shorten up the time frame would be appreciated. Furthermore, waiting, that a proponent who wants to refer a matter to the OMB has to wait 180 days before he can do that,



that's unrealistic. You have to wait six months before you can get an appeal and that just isn't proper, in our opinion, at all.

Interim control bylaws: Currently they're good for one year. The idea is to make them two years. My experience has been if there's an interim control in place for one year, they flip it over and have two years automatically virtually. If you make it two years, you virtually delay a project to four years. That's no way to reduce the cost of housing and that's no streamlining. We feel that proposed amendment should be deleted.

Plans of subdivision: There's a requirement now for a public meeting, and the Ontario Home Builders' Association is of the opinion that that public meeting is unwarranted. My personal experience has been that public meetings have worked in my favour, so I differ a little bit from my association on this particular issue. That's why I'm telling you it's not the same in Toronto as it might be in Chatham. In Chatham we've had good results with meeting with the public before rather than after. There's certainly some room for modifications there, I believe.

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On top of page 31, there's a provision for lapsing approvals which we think is unwarranted. Once you've gone through all the work and hassle of getting an approval through and then to find out in 12 months it could be simply thrown out, that you don't have an approval any more, it says right here, "will invite extortion by municipalities and force developers to bring product on stream when it cannot be absorbed by the market."

That's certainly true, ladies and gentlemen. There are certain projects in Chatham that have been extended and extended and extended and the market is still not there for them. I'm well aware a project could take 10 years and longer to bring on stream, and if the approvals couldn't be extended for a reasonable amount of time, it would just drive up costs even more.

The one that's of major concern to me as well is subsection 51(34). It has to do with redline changes to plans. Redline changes, as your adviser will tell you, are minor changes to plans. Please don't do away with that requirement or that possibility because there are needs for small changes that don't affect—yes, that make the plan just 100% correct. That's all it does. It doesn't change anything else.

It might be in a situation where you might have originally had six lots and now you end up with five lots. We do that by a redline change. I think it's important that that stays in the act. As a further point, public meetings are also very time-consuming and very often with very little modifications or substance.

I've just about reviewed the sections that I feel I wanted to bring to your attention regarding the amendments to the Planning Act. I've reiterated on the second page of my letter that subsection 51(34) would appear to do away with what's called redline changes. We suggest that's improper and therefore, please, keep that in act, that that will be allowed in the future.

My summary: As a member of the home building

industry, I am very concerned that our government receives submissions from our industry but does not appear to see the benefits or is not willing to implement them even for its own benefit as well as for the citizens of Ontario. A healthy and strong home building industry will distribute wealth across the province. It will also result in more taxes being paid by more people, keeping more people occupied and providing better health and stability for our society. If the research of the organization called Habitat for Humanity is valid, then the ownership of a home gives much greater stability to a family and provides both economic and social benefit. As members of the Ontario Home Builders' Association, we want to see this improvement to our communities.

Personally, having been involved in the home building industry and the land development industry for many years now, and for a number of years also involved politically in our community, we desperately need community economic development as well as industrial, commercial and residential development. If you like, I'm taking off my developer's hat here, but as a local politician, we want commercial and residential development. We need some of these reasonable changes.

I don't know when you ladies and gentlemen arrived, last night or early this morning, but if you take a drive through our downtown, it's in a desperate state. It's an area that has not seen development for many, many years. It needs something. We can also show you, if you take a drive around the city, the fine new subdivisions that are around our city right now. These are areas of new development, and I think they're a credit to our community. We believe as home builders we can continue to provide this kind of industry for our community, provided our provincial government gives us the necessary guidelines and support to carry out this work.

I'm not here running down the government, I'm not running down all the regulations you've tried to put forward, but I'm saying would you please, please listen to the people that are working in this industry. I want to work. When I work, I pay taxes. When I work, I provide housing for people, I provide a place for families to live in. I believe that's good for Ontario, I believe that's good for all of us.

When I, as a representative of the industry, come out and tell you what you're doing is harmful to us in industry, it's harmful to our communities, it's not for the benefit of Ontario, would you please listen. Would you please consider those points of view. That's not to say that the home builders have got all the answers for you: give them 100% of what they want, it'll be gold and gold for everybody. I doubt if that's the case. But I do believe that we do have professional ethics, that if you do check our records, what we do and what we produce is quality in this community and it's quality across Ontario by the Ontario Home Builders' Association.

Therefore, in closing, I respectfully request your careful review of the complete submission by the Ontario Home Builders' Association. Mine is but a small part of that. Where it's at all possible we could have agreement for changes, could we please have them from your government? In addition, if there are reductions in time

available to us, then we need those time frame reductions. That's a major cost to us.

**The Vice-Chair:** Mr Regts, if you would like the committee to ask you questions, we do need this time. We've got five minutes left.

**Mr Regts:** Thank you very kindly. That's the end of my submission too, so I'm open to any questions you might have.

**The Vice-Chair:** Thank you very much, Mr Regts. It's a very detailed one, and I'm sure people will look at these suggestions. The government side is first. I wondered if Mr Hayes would like to comment.

**Mr Hayes:** Yes, I'd like to just make two short comments. Henry, when you talk about the time frame to hold public meetings within 180 days being too long, I assure you, as a builder and developer, I realize that there is nothing there now that keeps from having that public meeting. It could be 300 days or two years or more. There's a time limit put in here on that.

The other thing is that I certainly appreciate your input and your suggestions, but the same as I told the individual yesterday from the home builders' association, the home builders' association is having input into the implementation advisory task force. As a matter of fact, I don't know Ian Rawlings and Jo Casey are here, but we are listening to the home builders' association along with many other organizations.

I'd like to just real quickly ask the staff, Philip here, to clarify the issue dealing with the redline changes.

**Mr Philip McKinstry:** The redline changes are still possible, but the government believes that some of these changes can be quite significant and that there should be some kind of at least public notification of those who have been involved in the development before. That was why that was put in. But they certainly are still possible, and we would recognize that they may often happen.

**The Vice-Chair:** Thank you very much. Now I'd like to ask Mr Curling if he has a question.

**Mr Alvin Curling (Scarborough North):** Thank you very much. You know, as you made your presentation I could hear the frustration in your voice, for over the years developers have spoken to governments about making policies in Toronto that have a greater impact than the other cities and have no consistency really with the kind of development you want in your areas.

Most governments are obsessed with the fact of rent-geared-to-income housing policy and not really having an overall comprehensive housing policy, as you said, building homes that are affordable and identifying some of the frustrations, as I say, with the bureaucracy that are involved, in order to get your development on line.

One of those things which I'd like you to comment on in what has been coming forth in the housing policy here is the matter of the intensification, and the way it will be administered seemed to me was geared to downtown Toronto and somehow asking you to adhere to that kind of aspect of it.

**The Vice-Chair:** Would you like him to be able to answer this?

**Mr Curling:** Yes, of course I will ask him to answer that, and I know he will, and very anxious too, and as a matter of fact, the affordability aspect of it, about making about 30% percentile geared to a certain part of the income area of the community. Could you comment on those two areas for me?

**Mr Regts:** Well, I think the affordability criterion is for the 60% level of people and not spending more than 30% of the income towards housing costs. Intensification is not really a Chatham area, Windsor area, Essex-Kent county area problem at all. We have—

*Interjection.*

**Mr Regts:** Well, regardless of where it's from, we think it's a Toronto-centred problem and not so much—we have lands in our city, like 600-plus acres, that we could do all the development without worrying about intensification by the large definition of intensification, so it's not very important to us.

But there are things in our downtown area, where we would like to take down commercial buildings and put in residential, maybe that's called intensification as well. If that's it, that's welcome. There are some of the things that we have to do downtown that we want to do downtown, but that kind of intensification is welcome. If it means simply increasing density, in our community there's just not that kind of need for that kind of thing.

**Mr Jackson:** Thank you very much, Mr Regts and Mr Michaud, for an excellent brief. You've covered a lot of territory.

Mr Regts, you didn't have occasion to comment about the disclosure and conflict-of-interest sections. Since you do wear two or three hats before us this morning, you may want to comment on that, but I'll set that aside for a moment. I'm intrigued by your letter to Randy Hope on the issue of the vacancies and so on. I am someone who has almost a similar background to yours and has been involved with rent control legislation since 1975 and have consistently voted against it in the Legislature.

I'm intrigued by the value of your rental properties, which are maintained at artificially high prices because they're locked in according to rent control and aren't allowed to fall freely and assist people with affordability. But I'm anxious to ask you why it is that you can't seem to convey, either locally or to the government, that with this kind of a vacancy rate, this kind of market intrusion by the government would have an adverse affect on the community.

I mean, it took courage to write a letter like this because self-interest would be: "Let's build more housing and who cares if it stays empty. Let's burn up the money, it's taxpayers', it's being shipped down the road from Toronto. To hell with them. Let's just build and have a few short-term jobs and we'll have another government disaster on our hands."

But you've had the courage to say: "Please, this is public money. Let's rethink it. We've got enough vacancies in our community"—16% to 20% is the figure I think you shared with us. That's pretty dramatic, and I know from my perspective we've been criticized, the Mike Harris Common Sense Revolution has been criti-



cized because we strike at this very issue.

**The Vice-Chair:** Would you like a response, Mr Jackson?

**Mr Jackson:** I'm going to get to it very quickly, Madam Chairman, thank you.

**Mr Jim Wiseman (Durham West):** Where's that soapbox for Cam?

**Mr Jackson:** Well, we know you're very critical of it.

**The Vice-Chair:** Order.

**Mr Eddy:** Randy should have answered the letter and then we would have had an answer.

**The Vice-Chair:** Order. Mr Jackson, would you place your question.

**Mr Jackson:** We're seeing hundreds of millions of dollars wasted on these kinds of projects and obviously one right in this community of Chatham. Would you like to comment on that, please.

**Mr Regts:** Mr Jackson and ladies and gentlemen, I think you've heard some presentation from our county as well. If you haven't, you're going to hear from our county. Our county and our city are a very frugal bunch of people. Rather than grab the government money and run and spend it, they've had a tendency not to do that.

I think if you know about our KAAG group, which is the joint group between our boards of education, public board of education, city of Chatham etc, our costs per pupil at our schools, both Catholic schools as well as Protestant schools, are the lowest in Ontario through cooperation that's been achieved between our county and our city.

We're not in the habit of grabbing government money saying, "Look, this is a government project, let's do it," but that's not to say it wouldn't be welcome. We were looking for that AgriCorp project that we didn't get. We would like to see the Judy LaMarsh Building filled with people working and staying in this community. Those are government jobs, and we would like to see our St Clair College grow. We do want that type of thing.

Now, I know you're getting to me about apartment buildings. Let me correct the 16% to 20% so that don't misunderstand on it. Those are our buildings, 16% to 20%, and they're smaller buildings. The official count is something like 4% or 5% around Chatham, but we have something like 4,000 apartment units in the city of Chatham and if you talk to the smaller apartment owners, like the apartment buildings from zero to 12 units and that type of thing, they have the highest vacancy rates and the units are available at low cost, and much lower cost than the subsidy rates that are being paid in the new projects in Chatham.

From our point of view after all, we will accept the government money when it comes in but it has not been wisely spent.

**The Vice-Chair:** Unfortunately, I will have to cut you off. I thank you, Mr Regts, for your presentation, and Mr Michaud for coming this morning. We have gone a little over time but I would like to advise the committee at this time that we will be starting this afternoon at 1:45. At

this time we will adjourn the committee and I thank you for your brief. We will be carrying that forward.

*The committee recessed from 1204 to 1345.*

STELLA BERBYNUK

**The Chair:** I'd like to call the committee to order. We welcome Ms Stella BerbynuK. You have 15 minutes, and if you would like the members to ask you some questions, please leave as much time as you can for that.

**Ms Stella BerbynuK:** I will try to.

**The Chair:** Very well. Please begin any time you're ready.

**Ms BerbynuK:** I'm ready to begin. I want to thank this committee for allowing me to come and express my views. I'm not a professional in the sense that the other complainants have presented their cases. I'm going to do it from a very layman's point of view, and I hope I can add new dimensions to what has been said and what you have considered.

What I have done is, I have taken two sections of the Planning Act outline in a very ordinary way, and what I'd like to address my remarks to before I proceed with the particulars are two sections.

The provincial government will set the policy, the municipal government will make the decisions and the Ontario Municipal Board will pre-screen matters in order to refuse hearings to applicants or objectors for a list of reasons. Here I ask myself, is this a democratic process, to deny the right to be able to go and present your case before the OMB? It is a well-known fact that the Ontario Municipal Board can be biased in its decisions and favour mostly politically influential developers.

Then what I did next is, I read the following reasons for Bill 163. One was to eliminate controversies over decisions around land use in Ontario—I question the validity of that kind of statement—and to create an ecosystem planning process that meets the needs of the community, the economy and the environment. I ask myself, is this apple pie in the sky, or is it an impossible dream? I went to the dictionary and I looked up the definition of "ecosystem," where it defined the system as "a complex of ecological community and environment forming a functional whole in nature." I don't know whether that is possible and I will address that a little bit further.

Now I'll come to the provincial government establishing land use planning, which the municipalities will follow or else. I want to go back to the 1970s. The Tory government imposed zoning orders which froze certain land developments and advised municipal governments that if the zoning bylaws did not incorporate the policies of the zoning order, there would be objection forthcoming from several provincial agencies. It sounds to me like Bill 163 is similar to that. I was hoping we would get away from that.

I won't talk about municipalities, because they're various shapes, forms and a combination of many shortcomings. I would like to point out what happened in the 1980s, talking about protecting farm land. I don't know whether that is possible under Bill 163. I can remember in the mid-1980s when Bill Davis raved about living in

Brampton, and he talked about it everywhere he went, whether it was in Windsor or Toronto or Detroit or Tokyo or London. They went before the board, and what was involved here was 2,000 acres of prime land in Brampton, and the OMB did not deny a hearing but ruled that the development should go on. So I say to myself, for the OMB to deny an applicant a hearing for a list of reasons is a denial of a person's right under the Canadian Charter of Rights and Freedoms, just for the sake of expediency.

Now I would like to take your attention to the questions of the ecosystem and the economy. I'm just wondering in this world, where everybody's working to one global effort to survive, whether that is possible. Let me go here into certain newspaper articles why I find it isn't feasible to do what the bill proposes. I mean, it's a very ideal situation, but in this world, there's no such thing as an ideal situation.

In the early 1970s, zoning orders were imposed to protect development on the grounds that development in certain areas would endanger future inhabitants due to the fact that there are plenty of poisonous residues in underwater sediment. Some 24 years later, it's the same, if not worse, and I'm just wondering if we have to go through the process where we have the planning board or committee tell us, "Really, is this the way we should go?"

I don't think I have to tell this committee about the dangers of the sediment that lies—and I'm going to talk about Lake St Clair, because I live there, and on the Thames River. I would say less waste is being dumped into the Great Lakes, but there are plenty of poisonous residues in the underwater sediment just waiting to be stirred up. We had Dow Chemical and large corporations, Ontario Hydro and other big conglomerates, that have poisoned our lakes and still persist in doing so, even though to a lesser degree.

The other question I would like to address here—and here I have articles—the Detroit newspaper has really reported some very, very extensive reports on the conditions of Lake Saint Clair. There is something that just recently developed we weren't really aware of, and it was because of zebra mussels entering our lake system:

"Zebra mussels scarf a lot of algae. That means more sunlight can filter through to the bottom of the lakes, causing more seaweed to grow. The weeds eventually break off and wash to shore in stinking blobs, providing a perfect medium for burgeoning faecal bacteria."

Now, that happened on the shores of Riverside and all the properties on the Canadian side of Lake Saint Clair. Tons and tons had to be removed. People were very upset about the situation, and nothing could be done for them.

It goes on to say, "Some scientists say that the cleaner waters mean high coliform counts and mounds of messy seaweed will become more common along Michigan shores," and, as you say, Canadian shores in the future.

Now, I would like to go into some of the things and read another article, which was reported on April 21, 1994. This is a very serious condemnation of what is happening in the Great Lakes:

"Only a fraction of the Great Lakes, which contain one

fifth of the world's fresh surface water, is fit to drink, the Environmental Protection Agency said yesterday. A survey that includes 99% of 8,560 kilometres of Great Lakes shoreline found only 2% in top condition, safe for drinking, fishing and swimming and able to support aquatic wildlife and toxic-free shellfish.

"Oceans fared best, 80% able to support all uses. Rivers and streams, 18% of which were assessed, were good for all uses 50% of the time.

"The prevalent pollution includes PCBs, mercury and DDTs, mainly from air and rain but also from industrial and municipal discharges, landfill disposal, urban runoff and sewage overflows and 30% of the droppings from birds and wildlife."

I'm cutting it short. Maybe it would be best for you to ask me questions, which I hope I can answer from my very small experience.

Now, it has been reported in the Ontario Private Campground Association books that: "Ontario has more than 250,000 lakes, thousands of kilometres of rivers and streams and almost 90,000 square kilometres of Great Lakes. More than 150 species of fish live in these waters. There has been some concern the way that commercial fishermen"—now, I'm not trying to say to stop it. But what happens is that they put their nets out into the waters, and on rainy days or very bad days it's very difficult for them to get them and a lot of fish die. It's important to the tourism industry and the recreation industry. Statistics show that every year nearly three million residents and 700,000 non-residents enjoy fishing in Ontario.

#### 1400

We'll talk about water. I thought I had my article here on water. Water is very important, and it's becoming an issue because of the United States. What if they ask us to assist them in their water problems? I ask, how could we deny them water when they're such a good neighbour? So we have to worry about water.

I think I am correct in saying that the Ontario government has awarded a firm to explore how to save water, to cut down the use of water.

This was done many, many years ago, and I'll show you some of the statistics we have here: flushing toilets, daily use, 41%, and only requires 102 gallons; bathing and showering, daily use is 37%, 70 gallons and requires 23 gallons of cold water; cooking, washing, drinking, 14%, 15 gallons of heated water and 20 gallons of cold water; washing cars and watering lawns and plants is only 4% and only requires 10 gallons.

So it's important that we do have these systems whereby we can conserve water. There have been showerheads devised, also water restriction units, and I'm wondering why these are not being mandated in some way, shape or form for the people in Ontario to use these units, because the day will come when we're not going to have that water. This, I think, should be the one aspect.

The other aspect that's so vital to our lives is air. That we can't control to a big degree, because when you think of Mount Pinatubo, what did it do? And then the oil burning in Saudi Arabia, what did it do to the air? It travels all over the world.



I think I will leave it at that. Now you can shoot your questions at me.

**The Chair:** I wish we had time for that, actually, but we've run out of time.

**Ms Berbynuik:** I've talked 15 minutes?

**The Chair:** Yes.

**Mr Wiseman:** See how time flies when you're having fun?

**The Chair:** But we appreciate very much your coming and taking the time to present this brief to us.

**Ms Berbynuik:** Thank you for having me. I hope I did add some dimensions to some of the problems that maybe other people expressed.

There was an article in the *Globe and Mail*. I think, in order to save our economy and sort of get ourselves out of the mess we are in, immigration must be controlled. We cannot afford any more of this. We can afford to probably send them food and maybe our doctors and our medicine, but to bring them here, we just can't afford it any more.

**The Chair:** Thank you.

#### MUNICIPAL ELECTRIC ASSOCIATION

**The Chair:** We invite the Municipal Electric Association, Mr Jim Yarrow as the chair, and Mr George Hostick is the past president. Welcome to the committee.

**Mr Jim Yarrow:** If anybody's late this afternoon, I don't know whether you noticed it coming down this morning, but it's too bad this isn't a roads committee of some kind. The 401 is just a mess around the Toronto area. In fact, I'd like to find out if it's still a mess for going home.

#### *Interjections.*

**Mr Yarrow:** I think I've started a whole new committee, Mr Chairman.

**The Chair:** The mess committee. Please begin.

**Mr Yarrow:** I'd like to thank you, Mr Chairman, and the committee for hearing us this afternoon. My name is Jim Yarrow and I chair the Municipal Electric Association, or the MEA. As well, I chair the Brampton Hydro Electric Commission. Joining me is George Hostick, president of the MEA and also the general manager of Niagara Falls Hydro. Kevin McGuire, our staff member from the MEA, is sitting just behind us.

The Municipal Electric Association was formed in 1986 from two predecessor organizations: one that represented elected and appointed commissioners and one that represented utility management. Today the MEA represents Ontario's 307 municipal electric utilities, which serve 75% of the province's electricity consumers.

The MEA welcomes the opportunity to address the standing committee on administration of justice hearings on Bill 163 and to lend our voices to that discussion.

As the elected and appointed members of municipal electric utility commissions will be directly affected by the proposed legislation, the MEA has developed this presentation on behalf of our members. As the umbrella organization for hydro-electric commissions and public utilities commissions in the province, we have prepared

the following remarks. We expect that some individual utilities may lend their own voices to the discussions as well.

Although we are concerned with the entire bill, the main focus of our presentation this afternoon will be on the disclosure-of-interest and open local government sections.

In principle, the MEA supports the government's efforts in trying to limit instances of conflict of interest. The MEA supports the provincial government's intent, but we question the vehicle through which the government has chosen to achieve these goals. Commission members can continue to declare a potential conflict of interest without having to disclose their holdings. Current practice within our industry is that commissioners declare a potential conflict of interest on matters that come before the commission. This practice has worked very effectively. Municipal electric utilities have remained relatively free of instances of conflict-of-interest problems. Consequently, MEA members question the need for the filing of disclosure-of-interest statements.

Many of our members have expressed the concern that the prospect of revealing one's holdings may deter excellent individuals from seeking office. In many communities, it is becoming increasingly difficult to attract individuals of quality to seek office. The reluctance of individuals to reveal their holdings could lead to further difficulties in attracting individuals to serve the public.

The MEA recommends that rather than requiring appointed and elected members to file a disclosure-of-interest statement, the legislation should include specific procedures for declaring a potential conflict of interest and the steps that must be followed once a potential conflict of interest has been declared.

Although the MEA is not recommending that the government proceed with the requirement for filing disclosure-of-interest statements, it is supportive of the position that will be brought forward to this committee by the Association of Municipalities of Ontario. It is our understanding that AMO will consider or will recommend that the Local Government Disclosure of Interest Act be modelled after the Manitoba Municipal Council Conflict of Interest Act as it relates to the release of information from the financial disclosure statements. We understand that under the Manitoba legislation the clerk of the municipality or secretary of the board acts as the custodian of the information. Copies of the disclosure-of-interest statements are not released directly, but information found in the statement may be made available upon request. In this way the member's privacy is protected. This is a far less intrusive model, in our opinion.

#### 1410

The MEA is also very concerned about the cost implications of the proposed legislation. Section 7 of the bill gives the minister the authority to appoint a commissioner to exercise the powers and perform the duties set out in the act. We question the need for the appointment of a commissioner under the act, given the significant cost associated with the establishment and running of yet another office of commissioner. We also question the need for the further expansion of the provincial bureau-

cacy. Given the provincial government's commitment to cost controls, the MEA wonders whether the government should be increasing the size and scope of the provincial bureaucracy.

We are also concerned about the cost to utilities of having to collect and maintain members' disclosure-of-interest statements. This is an additional cost that our customers will be forced to bear. Both from a cost factor and the effect on members' privacy, the filing of disclosure statements should be deleted from the bill.

As we said a moment ago, our members strongly question the need for the legislation. Nevertheless, given the government's stated intent to proceed, we do have specific concerns which we wish to address.

Although not set out in statute, it has been a valuable practice to appoint persons to the Ontario Hydro board of directors from municipal electric commissions. As Ontario Hydro's largest customer, distributing 70% of the electricity consumed in the province, municipal utilities have indeed argued for greater representation on the Hydro board. Ontario Hydro is the utility regulator, approves rates and also sells electricity to municipal utilities. It could be argued that Ontario Hydro has a pecuniary interest in many utility decisions. In its current form, Bill 163 impacts on utility commissioners' ability to continue to sit as effective members of the Ontario Hydro board. Subclause 2(3)(a)(iv) states that a member of a local board has "a pecuniary interest" if he or she "is a member of a body that has pecuniary interest in the matter."

The MEA believes it is vitally important that municipal utility commissioners continue to sit on the Hydro board. As an integral part of the electrical industry in the province, we know the business. Municipal utility representatives provide valuable input into the operation of the Ontario Hydro corporation. This input should not be lost. We are proposing that clause (h) of section 3 be amended in order that utility commissioners continue to sit as effective members on the "body," Ontario Hydro. We are recommending that the phrase "or an association of councils or boards" be added after "board" in the last line. In a moment, I'll recite the proposed change that this phrase creates: an exemption for representatives of the MEA or other similar associations.

Similarly, members of the Municipal Electric Association's board of directors are in part made up of municipal electric utility commissioners. In some cases, decisions made by the association may have a pecuniary impact on the operation of individual utilities. MEA sells services to its members, albeit on a cooperative non-profit basis. Utility commissioners also sit as members of the Municipal Electric Association Reciprocal Insurance Exchange board of directors. MEARIE, which operates as a separate entity from the MEA, is a reciprocal insurance exchange based on a contractual agreement signed by all of its members by which those risks common to public utility commissioners are shared. Again, actions and decisions of the MEARIE board may have a pecuniary impact on local utilities.

We therefore suggest that clause (g) of section 3 be amended, and I'll deal with just how that would read in a moment. We are recommending that the phrase "or by

a group of municipalities or boards" be added to the clause. Again, the addition of this phrase creates an exemption for individuals who sit as members of the MEA or other similar associations.

Language should be changed in clause (h) to say "as a member or office holder of a council, board or other body when it is required by law or by virtue of office or results from a nomination or appointment by council, board or an association of councils or boards."

Again, we are recommending that the language in clause (g) should be changed to say "as a director or senior officer of a corporation incorporated by the municipality or board or by a group of municipalities or boards or to carry on business on behalf of the municipality or board or by a group of municipalities or boards or as a person nominated by the council or board or by a group of municipalities or boards as a director or officer of the corporation."

Clearly, the MEA supports the principles of openness, transparency and the public's right to know. As discussions and decisions which occur during commission meetings and special meetings may have a direct impact on the public, the public should have an opportunity to participate in those discussions or be present during the deliberations. Members of the public should not only be aware of the board's decision, but should also be aware of how the board came to its decision. The MEA supports this principle; however, as with most principles, some exceptions must be put in place.

As members of the standing committee are well aware, discussions are often held during which various options are explored and solutions are hashed out. In many cases, the discussion is politically sensitive and therefore takes place in closed meetings. This is the case with cabinet and caucus meetings at both the provincial and the federal levels. The same principle should hold true for the local level of government. If discussions are forced into the public, more and more of the discussions will take place at the staff level. The result could be that local officials will tend to rubber-stamp staff positions. We strongly caution against this. We recommend a broadening of the exception for open meetings as set out in section 55 of the bill.

An additional exemption should be included which would read "advice regarding strategic planning and rate setting."

The MEA fully appreciates the rationale for the disclosure of gifts and benefits received as an incident of protocol or social obligations accompanying the responsibilities of office. It is our understanding that the minister will make a regulation setting out the limit for non-reporting of the gift or benefit at \$200. This appears to be based on subsections 6(2) and (3) of the Members' Conflict of Interest Act, 1988, which place the monetary limit at \$200. Bill 163 also allows for the commission to pass a resolution to set the limit at a lower value.

Given the fact that the Members' Conflict of Interest Act is six years old and that the monetary limits may be dated, the MEA suggests the monetary limit for the non-reporting of gifts and benefits could be set at a higher level. Bill 163 should continue to allow local boards to



pass a resolution to set the limit lower. We support the government's decision to have the limit set out in regulations, thereby allowing for regular increases to the limit, if needed, without the difficulty of trying to amend the legislation.

Subsection 6(2) requires that public utility commissioners file a financial disclosure statement with the secretary of the commission within 60 days of being appointed or elected. The bill does not indicate whether the secretary must ensure that the information that is filed by the commissioner is accurate. We question whether the onus rests with the member or the secretary of the commission to ensure that the information filed is in fact accurate. As well, there appears to be no penalty for failing to file. What course of action must the secretary take if a member fails to file?

The end of this presentation and the recommendations: The MEA is seeking an amendment to the bill in order to clarify the role and responsibilities of the commission secretary as it pertains to the filing of a financial disclosure statement.

Although the major focus of our presentation is on the local government disclosure-of-interest aspect of the bill, the MEA also has some concerns with the Planning Act amendments. The MEA is concerned that the proposed changes under the bill will impose provincial policy standards on local decision-making. In some cases, the provincial interest may conflict with local interests. Currently, subsection 3(5) of the Planning Act states that municipalities and local boards "shall have regard" to provincial policy statements in exercising planning matters. Bill 163 amends this section so that municipalities and local boards "shall be consistent with" provincial policy statements.

1420

The proposed amendment will, in effect, mandate provincial policy upon municipal utility commissions with regard to any planning decisions rather than requiring utilities to consider provincial policy when making planning decisions. The nature of the electricity technology requires a level of flexibility which takes into account local conditions. We can foresee a potential conflict between the provincial policy and local conditions. We therefore recommend that the current language found in section 3(5) of the Planning Act be retained.

The MEA recommendations can be summarized as follows:

- (1) The requirement to file disclosure of interest statements should be removed from the bill.
- (2) In order to control costs, the office of the Conflict of Interest Commissioner should not be established.
- (3) The standing committee should adopt AMO's recommendation that the Manitoba Municipal Council Conflict of Interest Act be a model for the Ontario legislation.
- (4) Amend the pecuniary interest sections in order to allow commissioners to continue to sit as effective members of the boards of Ontario Hydro, the MEA and MEARIE.
- (5) Broaden the exemptions from open meetings.

(6) Recommend that the monetary limit for the non-reporting of gifts and benefits be set at a level higher than is being considered and that municipalities and boards continue to be able to set a lower limit.

(7) The commission secretary's responsibilities and authority concerning the maintaining of disclosure-of-interest statements should be clarified.

(8) The current language found in section 3(5) of the Planning Act should be retained.

On behalf of the MEA, I would like to thank the committee for the opportunity to express our concerns. We trust that our presentation will assist you in the task of improving the bill. Given the government's commitment to move forward on the bill, the MEA has attempted to provide positive suggestions for amending the proposed legislation. We are prepared to answer questions.

**Mr Grandmaître:** Thank you for your presentation. I go back to page 2 of your presentation, "...continue to declare a potential conflict of interest." I was always told there's no such thing as a potential conflict of interest. You do have a conflict or you don't have.

**Mr Yarrow:** I used to be on municipal council and I think that language comes from the Municipal Act at a previous point in time. I think the meaning is more important than the wording in this instance and I wouldn't argue with your point.

**Mr Grandmaître:** My second question has to do with the commissioner, that you don't think that a commissioner is needed. If the legislation goes through, would you accept that the provincial commissioner, the existing provincial commissioner, become the municipal commissioner as well and hold both offices?

**Mr Yarrow:** That would obviously be an alternative and would satisfy the recommendations that we have of cost control.

**Mr Grandmaître:** I'm sure you're not too pleased about the cost of this—

**Mr Yarrow:** No.

**Mr Grandmaître:** —commissioner's office because you would have to pay for it, not the provincial government.

**Mr Yarrow:** That's correct.

**Mr Grandmaître:** This would be the responsibility of the municipal government school boards and also of your office.

Generally speaking, I don't think you agree that we should add a disclosure—

**Mr Yarrow:** I think we state that very clearly.

**Mr Grandmaître:** Good. I hope your message gets to the minister and the ministry. Thank you.

**Mr McLean:** On the issue you raised with regard to somebody not filling it out properly or not disclosing all of their finances, can the ministry staff tell me what would happen if somebody made a mistake in filling out their forms?

**Mr Peter-John Sidebottom:** The obligation would be on someone, I suppose, to initially raise this with the member. Failing that, if members insisted that the infor-

mation was correct, then the option would be to ask the commissioner to investigate to determine whether in fact it was accurate.

**Mr McLean:** The other question I have is: Is the ministry acceptable to looking at alternatives such as the Manitoba model? Are they willing to look at that as an alternative?

**Mr Hayes:** I think we will certainly review any proposals or amendments that are made. As far as saying, "Yeah, we'll go that route," I'm not about to say that, but we'll certainly prepare it and we think we have a piece of legislation here that is probably better than the Manitoba one.

**Mr McLean:** Well, obviously we're not getting any answers.

**Mr Hayes:** I'm sorry, Mr McLean. We have these meetings to get people's input and we'll review all the comments that are made and recommendations that are made. I think that's all we can commit.

**Mr Jackson:** Mr Chairman, I'd like to ask Mr Hayes just what was wrong with the Manitoba plan that was drafted by a real social democratic party in Manitoba.

**Mr Hayes:** Well, there's always lots of room, regardless of what party you're in, for improvements and—

**Mr Yarrow:** I thought this was our appearance.

**Mr Hayes:** No, no, not at all.

**The Chair:** Mr White first, and then if there's time for another question—

**Mr Drummond White (Durham Centre):** I'll defer to Ms Harrington.

**Ms Harrington:** First of all, I'd like to thank both of you gentlemen for coming this distance on the 401. I certainly realize how far it is.

I wanted to ask you about your stand on the office of the commissioner. I'm wondering if you're aware of some of the reasons that we went to this idea. In the past, a citizen who wanted to pursue a matter where he or she felt there was a matter of conflict of interest would in effect have to go to the courts and would have to do it at their own expense, I believe; that is, with the cost of a lawyer. In effect, this is really helping our society to not have those barriers, and there certainly are advantages to having a commissioner dealing with about 7,500 people who are in municipal elected office across this province, to help them as well.

Actually, I should ask the ministry staff to comment on that particular aspect or reason for having a commissioner. Have I stated it correctly?

**Mr Grandmaitre:** I think so. I heard your question very clearly, but the answer will be—

**The Chair:** Are you seeking affirmation of your statement?

**Ms Harrington:** From the ministry that this is one of the reasons we've gone to a commissioner, so that the general public does not have to go through a lawyer.

**Mr Sidebottom:** Our findings have been, over the last 20 years of experience with the legislation and, more recently, the last four or five years, that the costs have

become prohibitive and in fact have acted as barriers to justice, so that the average person would be quite reluctant to gamble \$20,000, \$30,000, \$40,000 to enforce what is a public piece of legislation.

There are two aspects, one being the cost and the other being that this is public legislation involving a public officer and yet it went to a private individual, which people felt was inappropriate.

**Ms Harrington:** I wanted to make sure that you did have the background as to why this was important, and if you did wish to comment further, Mr Yarrow or Mr Hostick.

**Mr Yarrow:** I think it was stated earlier, would we consider the alternative to be an existing commissioner? I'd suggest that would be one way to answer the question of cost.

**Ms Harrington:** So your main concern was just the cost?

**Mr Yarrow:** Yes.

**Ms Harrington:** Well, hopefully we're not, as you say, setting up a bureaucracy; we're setting up a smoothly functioning, efficient, one-person system.

**The Chair:** Thank you, Ms Harrington. Mr Hayes has a few comments to make by way of clarification.

**Mr Hayes:** In your presentation, when you talk about section 3 of the disclosure of interest act, (g) and (h), this legislation that's existing legislation right now, outside of very minor, it doesn't change those sections at all under the new act.

**Mr Yarrow:** I think it's the overall context.

**Mr Hayes:** I know, but there's legislation that's been there for years. We're taking it and putting it in here.

**Mr Grandmaitre:** From the municipal act or—

**Mr Hayes:** No, from the conflict-of-interest act.

Yes. There was another area when you talked about the clerk and what procedures. It is spelled out quite clearly in section 15, where the clerk of a municipality and the secretary of a board shall maintain a register of disclosures for the members of the council or board respectively, and there's a fair number that it lists here on the procedures that have to be followed and have to be met.

**Mr Yarrow:** I think the main import there as far as we were concerned had to do with whether or not the information being filed was accurate, and how do you attest the accuracy of it? I would submit that of course on a personal level—

**Mr Hayes:** The commissioner would be doing that, and I don't believe it would be the clerk if someone questioned it. I mean, the commissioner provincially would be the one who would be checking it out.

**The Chair:** I think we are finished with questions and other points. We thank you very much for coming today and thank you for the presentation.

**Mr McLean:** Mr Chairman, could I have clarification from the parliamentary assistant? How many commissioner offices are you going to open up in northern Ontario?

**The Chair:** A staff person, perhaps?



**Mr Hayes:** I don't plan on opening any myself.

**The Chair:** A rephrasing of that, please? Not a rephrasing: Please restate the question so that a staff person can—

**Mr McLean:** How many offices of the commissioner are going to be opened up in northern Ontario?

**Mr Sidebottom:** The legislation provides that the minister will appoint a commissioner and then the commissioner has certain powers to appoint assistant commissioners. But there is, as I understand it, no intention at this point to open, if you like, regional offices for the commissioner. Most of the work of the commission will be done through the mails. People will be submitting documents in writing, so there won't be as great a need to have onsite hearings with individuals.

STOREY, SAMWAYS PLANNING LTD

**The Chair:** We invite Storey, Samways Planning Ltd, Mr Tom Storey, president.

**Mr Tom Storey:** Thank you, Mr Chairman. My colleague is George Denys, who is the deputy reeve of the township of Raleigh. Maybe by way of introducing myself, I can indicate how he fits into sitting up here with me.

As you noted, I am the president of Storey, Samways Planning. I've been practicing planning in the Kent-Essex area for approximately 20 years. I'm here today representing the township of Harwich and the township of Raleigh, and Mr Denys is the deputy reeve of Raleigh. When I saw him arrive, I thought it would be prudent for me to invite him to come up here with me since I'm representing him. He may have some words of his own either in answer to questions or in addition to what I've provided you in a written format.

This presentation is made on behalf of the township of Harwich and the township of Raleigh, located in south-central Kent county, total population of 12,500, a population which has remained unchanged since 1971. The two townships comprise approximately 170,000 acres. Most of that land is either prime agricultural land or speciality crop land. I'd like to add—it's not in here—that although the population is remaining steady, in fact their demographics have changed radically. The rural farm population in these two townships, as well as most of Kent county, has decreased by about half, and this has led to a lot of changes and pressures on the various development scenarios which could occur in the township.

The townships are concerned about retaining local control of land-use planning, protecting their strong agricultural economy, but pursuing other economic development opportunities which may exist in the interest of diversification and community economic improvement. They have been very active in a wide variety of long-term strategic planning endeavours in recent years, including the preparation of several recent papers on the Sewell commission report. The townships are very near to concluding a precedent-setting, comprehensive intermunicipal planning and water service area agreement with the city of Chatham, solving problems that required provincial intervention and great expense in other municipalities such as Sarnia and London.

The townships are concerned that the passage of Bill 163 as it presently stands will result in further concentration of land-use planning authority in the provincial bureaucracy and not, as claimed by the minister, in the empowerment of lower- or upper-tier municipalities.

Subsection 6(2) of the act—I'm talking about Bill 163 there when I refer to the act—replaces subsection 3(5) of the Planning Act in that local municipalities must now "be consistent with" provincial policies rather than "having regard to" these policies. The existing section places a significant burden on a municipality to prove why it should be able to depart from stated provincial policy. This has permitted local councils a reasonable if limited flexibility in applying provincial policy and has mitigated any abuse of power by the province by providing a third-party arbitrator of disputes in such matters; ie, the OMB. Also, the courts and the OMB have developed a jurisprudence regarding interpretation and application of the phrase "have regard to" which is now understood by all parties in the land-use planning field.

With the issuing of a new comprehensive set of policy statements and implementation guidelines, the province has occupied a powerful policy position, as recommended by the Sewell commission, which should not require the imposition of further limits on local decision-making.

Section 10 of Bill 163, where it proposes a new subsection 17(29), would now allow the ministry to refuse a referral to the OMB of an official plan amendment passed by a municipal council on the grounds that there are no apparent planning grounds or that the plan is premature. I have a lot of experience in going to municipal board hearings, and these are in fact very often the issues to be decided at an OMB hearing.

In subsection 17(11) of the present act, the minister is required to refer an amendment if requested by a council. The ministry cannot refuse to refer based on its own value judgement of the planning merits of the plan, as it will now be able to do under Bill 163. This is clearly a usurpation of authority by the province and a denial of a basic right of an elected council to third-party arbitration before the municipal board.

Subsection 42(1) of the act, which amends section 70.1 of the Planning Act, provides the ministry in clause (e) the power to dictate "the contents of official plans" for a single municipality or a group or class of municipalities by regulation. There are two concerns with this item.

First, in 1993, Bill 40 of that year gave the ministry the power to enact regulations under the Planning Act, a power reserved prior to that for the Lieutenant Governor in Council—the cabinet, in other words. At the time, the minister could only regulate innocuous matters of procedure, and that may be why no one took particular notice.

However, now a municipality is confronted with a circumstance whereby the ministry has the power to virtually amend or force amendment to a municipal plan by regulation, without even the modest buffering or check on such authority previously offered by the cabinet. This is a substantial power shift to the provincial bureaucracy at the expense of an elected municipal council. Once again there is reason to question why the planning

process in Ontario is not given an opportunity to "test drive" the new policy statements without resorting to such additional draconian measures.

Part I of the act replaces the old Ontario Planning and Development Act with a new OPDA which is set out in schedule A of Bill 163. This is a very powerful act, seldom used in the past, which gives the minister the power to order the establishment of development planning areas and prepare plans for these areas which would override municipal bylaws and existing official plan policies. In the old OPDA, such an order had to be approved by the Legislature. Now approval is only required by the Lieutenant Governor in Council.

Also, in the old act the minister could only refuse to consider an amendment to the development plan if it was not made in good faith, was frivolous or was made only for the purpose of delay. In the proposed act, the minister can refuse to consider an amendment if it is not in the provincial interest. Given the much-broadened provincial interests described in part III, section 5 of Bill 163, which replaces section 2 of the Planning Act, it would appear the ministry has almost carte blanche in this matter. As in previous instances described above, local municipalities are now denied an avenue of open consideration of an important planning matter at the provincial level, ie, approval of a plan by the Legislature, and the disposition of locally prepared amendments to a provincially driven plan is subject to value judgements of provincial bureaucrats rather than third-party arbitration.

The Sewell commission proposed a planning system which gave the province much greater control of policy issues but balanced that authority by providing municipalities greater approval authority. In particular, Sewell recommended that counties with official plans become approval authorities for lower-tier official plans and plans of subdivision. Bill 163, while granting such authority to several regions, does not make any statement regarding counties. Therefore, a vital check on provincial authority in local planning issues concerning the system of power redistribution envisioned by Sewell is missing. For municipalities like Harwich and Raleigh, there's nothing to offset the considerable new power of the provincial bureaucracy which I've alluded to above.

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#### Conclusions:

(1) By making it difficult, if not impossible, to vary from the strict wording of new provincial policy statements, many of them prohibitive in nature, Bill 163 places further limits on the land use planning decision-making authority of municipal councils to the point where they are afforded virtually no flexibility of interpretation and no reasonable recourse to the OMB to overcome any abuse of power by the provincial bureaucracy. This situation is exacerbated even further by the lack of a formal or legislated public input and approval process for implementation guidelines prepared by the province.

(2) The right of a municipality to third-party arbitration by the OMB, an important mitigation of provincial bureaucratic power in the past, has been greatly reduced by the right of the ministry to refuse referral to the OMB of official plan matters approved by municipal councils

based only on value judgements of the planning merits of the subject issue.

(3) The provincial bureaucracy can now virtually amend or force amendment of municipal official plans by regulation. Such action should be considered a denial of the right to due process otherwise provided in the Planning Act and an important cornerstone of the planning review system proposed by the Sewell commission.

(4) The only true check of the substantial power given to the provincial bureaucracy in the Ontario Planning and Development Act, ie, approval by the Legislature, has been removed.

(5) The effective balancing of decision-making power and policy provision between the provincial bureaucracy and municipal councils recommended by the Sewell commission has not been implemented, particularly to the detriment of counties and lower-tier municipalities.

#### Recommendations:

(1) The proposed amendment to subsection 3(5) of the Planning Act—in other words, that subsection dealing with the "to be consistent with" phrase—should be deleted until at least such time as it can be demonstrated that the province is unable to effectively apply its new policy statements without such authority.

(2) An additional amendment to section 3 of the Planning Act should be provided requiring the preparation of implementation guidelines of provincial policy statements be subjected to a public consultation and approval process.

(3) The proposed new clauses found in section 10 of Bill 163 whereby a ministry official can make a value judgement on the planning merits of a referral request on an official plan matter either be deleted entirely or reworded so as not to apply to municipal councils.

(4) Clause 70.1(e), found in subsection 42(1) of Bill 163, which gives the ministry the power to regulate municipal planning policy matters of substance, be deleted.

(5) Restore the requirement for legislative approval of ministerial orders regarding development planning areas, which has been deleted in the proposed new Ontario Planning and Development Act.

(6) Remove the power of the minister to refuse consideration of an amendment to a development plan prepared under the Ontario Planning and Development Act based on its impact on provincial interest, found in subsection 6(4) of schedule A.

(7) Add a provision to section 17 of the Planning Act making counties with official plans eligible to become approval authorities of lower-tier official plans.

(8) Add a provision to section 51 of the Planning Act making counties with official plans eligible to become approval authorities of plans of subdivision.

**Mr McLean:** I'd like to go back to page 2, section 10 of the act, "subsection 17(29) would now allow the ministry to refuse a referral to the OMB of an official plan amendment passed by a municipal council...." They're making it worse than what it has been before, are they not?



**Mr Storey:** Yes.

**Mr McLean:** What would happen now if I had an aggregate 100 acres and I wanted to have that rezoned and I went through the process at council? The normal steps are that it ends up at the OMB. The ministry could now say: "We're going to defer it. We're not going to let it go to the OMB." Could that happen?

**Mr Storey:** First of all, if it's a zoning matter, it would fall under another section of the act where it would go directly to the OMB. If it's an official plan matter, which is what this refers to, which is more serious, I think, if municipal council approved your application and amended its official plan, the Minister of Municipal Affairs has the power to refuse referral for a number of reasons. The two which have been added are if he or she doesn't think it's based on any planning grounds or if he or she thinks that the plan is premature. As I stated, usually those are common reasons why it goes to the municipal board in the first place and those are the issues you're fighting over. Now those issues can be decided ahead of time by the minister and you don't have a right to go to the OMB.

**Mr McLean:** The minister can refuse an amendment if it's not in the provincial interest.

**Mr Storey:** It doesn't state that.

**Mr McLean:** That's what you say in paragraph 4.

**Mr Storey:** That has more to do with the Ontario Planning and Development Act. Actually, the province declares a development planning area, puts a plan on and then you or I or one of the municipalities covered by this plan proposes an amendment, and if the minister doesn't think the amendment is in the provincial interest, he can refuse further consideration of it.

**Mr McLean:** But you say "...a provincially driven plan are subject to value judgements of provincial bureaucrats."

**Mr Storey:** Right.

**Mr McLean:** So the bureaucrats are going to be making the call and then the minister will rubber-stamp it. Is that right?

**Mr Storey:** I'm not clear on how the decision-making process works. I've assumed that the minister is subject to an information flow controlled by the ministry and I'm not sure how they come to their decisions.

**Mr McLean:** I want to thank you for your presentation. I hope that the ministry will make some changes in light of it.

**Mr Wiseman:** I'd like to try and give you a different slant on subsection (29). As a former community activist, my paranoia would come from the other direction, that the minister would disallow my request, as a citizen, to go to the Ontario Municipal Board on the basis that the request wasn't made in good faith or that it was frivolous or vexatious.

I would be worrying, as a community activist, that a region or a county that has an official plan but has been given approval authority with respect to the development would then be able to turn around and offer up an official plan amendment that would take a piece of property that

was zoned in the official plan as industrial/commercial and rezone it as residential, and that I as a resident would be unable to take that to the Ontario Municipal Board because somebody in the ministry has deemed my complaint to be frivolous or vexatious or that it doesn't meet the planning criteria.

You've given us the view of the council and that view as curtailing the rights of council to make those decisions, but I think there's another side to this in that it can be used the other way. We have been hearing from a large number of citizens. That's a possibility as well.

**Mr Storey:** Any objection can still be rejected if it's frivolous or vexatious. That hasn't been removed from the act; it's that they've added to it.

**Mr Wiseman:** What we're hearing and what I would say is that this section is more likely to be used with respect to citizenry than it is to councils because councils, in my history, have done some pretty strange things.

**Interjection:** Changes.

**Mr Wiseman:** Official plans that have just been created—for example, in Durham we went through three years, almost, of official plans, working on this official plan, creating this holistic plan for growth and development. It's not even a year old and the regional council wants to make three changes to it that are considerable. My fear about this section is totally the opposite of yours, and in my opinion "shall be consistent with" is far too weak a phrase. It should be "will conform to," on behalf of the citizenry. So you can see that this is a compromise situation to be in.

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**Mr Storey:** That would be a disaster, Mr Wiseman.

**Mr Wiseman:** With respect, in some cases it's a disaster for the citizenry of this province when councils make those kinds of changes and make those kinds of flips in official plans, where they take zonings that are supposed to be industrial/commercial and turn them into residential/commercial and the Ontario Municipal Board rubber-stamps them.

**Mr Storey:** With respect, Mr Wiseman, if you were to do what I suggest and remove items (i) and (iv) from subsection 17(29), citizens objecting to whatever happens in Durham will still have the right to go to the municipal board. Under this, if the regional council has the right as an approval authority to say some objection at a lower-tier level is premature or not a planning issue—

**Mr Wiseman:** That might be the only thing you and I agree on.

**Mr Storey:** —then it can deny to forward that on. So this affects the public. I'm here on behalf of Harwich and Raleigh, but this affects the public in the same way it affects a municipal council.

**Mr Wiseman:** I agree with that.

**Mr Storey:** So that's why I'm saying let's pull that out of there so that someone can't be arbitrary in preventing the referral of items to the Ontario Municipal Board.

**Mr Wiseman:** That doesn't go to the municipal board anyway. If you knew the law you would know that. That goes to a joint hearings board.

**Ms Haeck:** I am interested that you are coming to us strictly from the point of view of the municipal sector and haven't made mention of one or two of what I would consider the important aspects for the residents. I think in that sense I'm taking somewhat the view that Mr Wiseman has taken.

Mr Martin, who's the provincial facilitator, gave us a technical briefing on Monday and indicated that the resident phrase here was "test drive," that the whole concept of a complete application and working with the residents and making sure that the whole process is fully understood by the public and the residents of an area is extremely important and one of the things that is a real change in the whole planning structure or what is being proposed here for planning in this act. I'm wondering how you view the whole process of providing a complete application and making sure that's going through the approval process and the possibility for public involvement in this whole planning process.

**Mr Storey:** I strongly support that part. In fact, most of what Mr Sewell recommended that found its way into the act was a process that we've already been following in most of our communities, certainly for significant developments or proposed changes to an official plan. I have no objection to that whatsoever. My objection here is simply that we're trying to pile one new authority on to another. I'm saying we've got a very comprehensive set of provincial policies proposed that deal with virtually every item now. In the past we didn't have provincial policy statements on the environment per se or on the natural resources. Now that we've got them, now that we have implementation guidelines, let's give them a try and see how things work before we give all these other powers over to the minister.

**Ms Haeck:** One of the things that I know my residents are very concerned about and that they have found themselves in some rather frustrating arguments with their own municipal officials about at times is that certain things have been put in place. They did not understand that the basis of that particular infrastructure provided the mechanism by which massive development could occur in basically rural areas, which was not anticipated by the residents and they were assured years before that this was not going to happen.

The planning criteria on which these further development decisions are made are frequently not understood by the public and the ramifications of these decisions are pretty massive for individuals. I've referred to planning as an arcane art. It is somewhat mysterious to the local residents. I didn't pretend to be a planner—I'm a librarian by profession—before I got elected, so to try to delve through this any more than anyone else is as frustrating for me as a layperson as for the residents, and I have a lot of sympathy for them when they don't understand what the standards are.

I think by putting policy statements in place residents finally, more so than I would say planning departments and municipal officials who have been working at this for a number of years, have a much better understanding of at least what the floor is, as opposed to having to be digging in the basement even to try first to come to an

understanding of what's being put in place.

I think it's a matter of providing everyone with a better understanding of how we're approaching the idea of what's going to be happening in their neighbourhood. I know I've probably taken my time.

**Mr Eddy:** Thank you for your presentation. I just wanted to comment briefly on the first paragraph, where you say your townships are "concluding a precedent-setting comprehensive intermunicipal planning and water service area agreement with the city of Chatham, solving" some problems, and you mention a couple of disasters of the past where thousands and thousands of acres of prime agricultural land have been added to urban centres, which will use it, I expect, or tend to use it for one purpose only, and that's to develop it as fast as possible.

I think what you're saying on the disasters of the past is, let's build a better future, a new way. I really appreciate that and compliment the municipalities in working in that manner. That should be the way of the future: cooperation.

I just want to say that I don't want to have the conditions or terrible planning decisions that have been mentioned in Durham colour my views of planning in Ontario, and especially rural Ontario, because I think a long time ago Durham was designated as part of the greater Toronto area and designated as a growth area and wanted it at that time. I don't want that to colour what happens in the rest of Ontario. I want to make that clear.

You're saying in the point on page 2 that "...the plan is premature." Indeed, many applications to the OMB have been on that very point, whether it is premature or not, and all people are heard. People are always going to be frustrated with planning decisions because in all applications, usually people are not satisfied even if they get their own way, mostly. We've got to remember that. Planning means change as you go along and you've got to be prepared to give your input.

I think the main thing I wanted to zero in on was your statement in item 5 at the bottom of page 2 where you say, "The Sewell commission proposed a planning system which gave the province much greater control of policy issues, but balanced that authority by providing municipalities greater authority." It seems to me you're saying what is proposed here does not accomplish that aim and I think you feel very strongly that this aim must be accomplished. Would you elaborate on that for us briefly? It would be helpful.

**Mr Storey:** Certainly, I'd be happy to. Sewell, in my estimation—we looked at it pretty carefully and made several presentations—was saying the province should lead the planning process by providing more coherent and comprehensive policy statements, and I agreed with that.

**Mr Eddy:** Oh, I see.

**Mr Storey:** On the other hand, while the province should assume a greater role in providing policy, approval authority was going to be dispersed from centralized position where it is now, primarily with the Ministry of Municipal Affairs, out to upper-tier and even, to some extent, lower-tier municipalities.

In this act, I don't see the second part of that teeter-



totter working there, just the first part, where the minister has been granted all sorts of new powers and abilities to act that he never had before, but I don't see the opposite occurring for local municipalities. That might be the best approach too for Durham or York or Hamilton-Wentworth or any number of regional municipalities where controlling growth and development is a problem. We don't have that problem in Harwich and Raleigh or in Kent county.

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**Mr Eddy:** There's a difference—

**Mr Storey:** As I pointed out, the population hasn't grown. Between 1971 and 1991, the acreage of improved farm land actually increased in Kent county, so this is not a county suffering from rampant development. It's just the opposite. We're doing our best to discover economic development opportunities and are trying to pursue them and balance that with the need to protect the agricultural economy. That's the best example I can give.

We don't want rules that are set up for one situation being applied to us. We thought the old rules were bad enough, frankly, but they're becoming even more conservative or restrictive in their approach, which makes it more difficult for townships like Raleigh or Harwich to try to diversify to some extent their economies.

**Mr Eddy:** I see the difference between urban and rural. Indeed, some rural areas are actually losing populations.

**The Chair:** We've run out of time.

**Mr Eddy:** I just want to comment on the term "be consistent with." The ministry says there is flexibility in that statement, so later I'll ask you for your comment on that.

**The Chair:** Another time, perhaps. Mr Hayes, do you want to make some clarification?

**Mr Hayes:** Yes. Thank you, Tom and George, for your presentation. On page 3, your issue number 2, what Mr Sewell recommended in Bill 163 actually set out the basic or minimum content of official plans, upper-tier and local. Bill 163 leaves this content to be defined in regulation. Dale Martin's implementation task force, which covers just about every stakeholder in municipal politics or planning, is consulting and developing a list for the regulation. The theory is that everyone, regardless of whether they're a region, county, township, will know up front what the rules will be when you're developing the official plan. I think that's very important. Just to clarify, the regulation could not be used to amend an official plan actually in the way, Tom, that you indicated in your presentation.

The other issue is dealing with subsection 17(29), which we've had a lot of discussion about. I don't see where the minister or the bureaucrats are getting any more authority. In fact, the municipalities will be having more authority. The thing is that this section as set out, as we talked about before—we've heard a lot about all of the frustrations and roadblocks and things—will actually streamline the process. There's no question in my mind on that. I think the most important thing that's added in here is:

"The approval authority may refuse to refer all or part of the proposed decision to the municipal board if,

"(a) the approval authority is of the opinion that,

"(i) the reasons set out in the referral request do not disclose any apparent land use planning ground...."

Then it goes on to say other things, but I think that is very, very important. Thank you. I hope I have cleared this up somewhat.

**The Chair:** Do you want to comment on this, or not?

**Mr Storey:** I know Mr Hayes and I respect him and I disagree with him.

**The Chair:** We thank you both very much for the presentation you've made to us.

ROY WILKINSON

**The Chair:** We welcome Mr Wilkinson.

**Mr Roy Wilkinson:** I should say at the outset that I'm not here to present specific recommendations for changing the proposed legislation known as Bill 163. You've already heard some and will hear lots, more likely, in the next three weeks of these hearings. Rather, I'd like to discuss the process or at least my personal perception of the process which led to the bill. I'll refer only to parts II, III and IV of the legislation.

The proposed changes to the Municipal Conflict of Interest Act, now to be called the Local Government Disclosure of Interest Act, are significantly different from those originally presented early in the current three-year term of elected municipal officials. The legislation is the result of much input from individuals and elected bodies, including the Ridgeway council on which I've served since 1977. The Ministry of Municipal Affairs is to be commended for responding favourably to many of the recommendations it received.

Our concern from the outset was about the need for public disclosure when only eight elected members of councils, commissions and boards in the whole province in 18 years have been found guilty of violating the present act.

Only in June of this year did it come to my attention that the Association of Municipalities of Ontario has been calling for a register of disclosure since its 1979 report on municipal conflict of interest and that the practice has been adopted in a number of other provinces. Perhaps had we known this earlier in the consultation process—and I'm not blaming the ministry because we didn't know—we, Kent county council and others would have directed our concern about the overkill towards AMO instead of towards the province.

Because of the changes agreed to by the ministry, disclosure will certainly be far less intrusive than first proposed. Although I have only seen the draft forms to be used, it appears now, thanks to AMO, that completing them will just be a time-wasting chore for 99.99% of elected municipal officials, who will never violate the act.

The process leading to the changes to the Planning Act fell just short of being a model for the consultation process which should be undertaken when any significant legislation is proposed by the province.

While many initially questioned the relationship

between the Sewell commission and the government, it's now obvious the concern was unwarranted. Some might even suggest it was fearmongering to undermine the efforts of the province.

Many councils, including ours, made several presentations during the process of redrafts and public hearings. Many of the recommendations made along the way by our council were addressed by the commission. By and large, we don't have substantive concerns with the legislation. Only time will tell if the changes actually speed up future amendments to our official plan and zoning bylaw and local development. We will also have to wait to weigh the impact of future provincial policy statements.

The flaw in the process as I see it which prevents it from becoming a model is evident in the difference between the commission's report and what is now Bill 163. My concern is that a number of recommendations have been completely neglected or significantly altered.

After hundreds of municipal officials made their views known, and these were articulated by the commission, I am very disappointed that some bureaucrat or bureaucrats have second-guessed this collective wisdom. I understand that the commission, AMO and the environment movement were in agreement on how the legislation could have been written. At the very least, they should have been consulted about changes before the bill was written.

While originally sceptical, eventually the public gained confidence in the consultation process to change the Planning Act. I'm very, very concerned that many will now lose confidence in this government if amendments aren't made immediately to redress the interference of the bureaucracy in this process. The views of the commission, AMO and others must be reconsidered and they must be parties to the implementation process. If that doesn't happen, Mr Chairman, I see little value in your government ever again suggesting that municipalities consult with you on any issue.

1510

I haven't described the discrepancies between the commission's report and Bill 163. I have no doubt that many others have already or will soon do that. As you probably know—certainly Mr Hayes knows very well—municipalities outside of the Golden Horseshoe often complain that provincial decisions do not reflect our needs because of the Toronto mentality of many of the government's bureaucrats. I'm afraid this time they are out of step with all municipalities, large and small, as well as the environmentalists and the home builders: all those affected by the act. If the parties hadn't agreed, it would be one thing, but because there is general agreement among them, if this hearing does nothing else, it must send a clear message to the bureaucrats that the elected officials, not them, are running this province.

Throughout the consultation process I constantly heard that various elected bodies had no problems with the proposed changes to the Municipal Act which affect meetings of councils, commissions and boards. With one voice they said, "Oh, we already have open meetings." Mind you, some of them have recently amended their procedures to conform.

Now there are cries of mistrust. I've heard fears that when two members of council discuss a municipal matter on the street, it would be considered by the act to be a meeting. I wonder why these concerns weren't raised earlier in the process. I am personally suspicious that they are ill-founded and are intended only to undermine the integrity of this government. In any case, the report of your hearings must clarify the definition of what is a meeting.

I was on holiday until yesterday. I haven't had much time to prepare, but I thank the committee for allowing me to present my views at this hearing. I trust that your eventual findings and deliberations will be impartial and will reflect the wishes of the people you serve. I look forward to your final report.

If you wish, I'd be pleased to answer questions you may have concerning my presentation and/or my thoughts on the bill per se and how I see it impacting on my municipality.

**The Chair:** Thank you. There is only time for a very brief comment or brief question from each caucus.

**Ms Haeck:** I want to thank you very much, Mr Wilkinson, for coming before us. Actually, Mrs Harrington just showed me a clipping out of the local newspaper in Niagara Falls from a resident and this is his perception, Mr Perry's perception: "In our own experiences, municipal governments are used to getting their own way and they're not interested in negotiating with third parties."

He was referring to dealing with citizens and citizen groups, which I think leads to the sort of overall perception that people have that when you get two councillors in a doughnut shop, possibly meeting a developer who came in also for doughnuts to take to the hockey game, maybe they might be concluding a meeting.

I really appreciate the fact that you've raised the point of a glossary and a range of definitions because I think we all, through this whole process, have had some very good discussion dealing with what the public's perception is. Obviously, there's a perception on the part of certain municipal councils about what we're trying to do, but I'm happy that another citizen came forward and raised some very good points. You can obviously comment on my comments, but I think your views are important and I think the more we can clarify a number of those terms, the better it will be for all of us.

**Mr Wilkinson:** Certainly, thank you. I don't see where those two councillors meeting that developer can come to a resolution. They may discuss the matter, they may discuss what they would present in a committee, but they cannot speak on behalf of the council—

**Ms Haeck:** That's right.

**Mr Wilkinson:** —as you very well know. So the matter still is going to have to come before open council, where decisions will be made and recorded, open for public scrutiny.

**Ms Haeck:** Agreed, but perceptions are somewhat skewed—

**The Chair:** M. Grandmaître, briefly, of course.

**Mr Grandmaître:** Thank you for your presentation.



As always, I'll be very open about this. Do you think that this legislation will remove the perception that municipal politicians, provincial politicians, federal politicians are a bunch of crooks?

**Mr Wilkinson:** No.

**Mr Grandmaitre:** Thank you.

**The Chair:** Ever so brief. Mr McLean.

**Mr McLean:** I want to thank you for coming forward. You said it as it is, and it's nice to hear that. Eighteen people is not many people to—

**Mr Wilkinson:** Eight, in 18 years.

**Mr McLean:** Oh, it's 18 years, eight people.

**Mr Wilkinson:** You take that 7,500 that was referred to earlier and multiply that by 18 years and multiply it by the number of decisions that are made at every council meeting, and we're talking about a minuscule need for such legislation.

**Mr McLean:** Yes, and you said if they don't fix it, they'll lose confidence in the government. Well, I think they've already lost that. Thank you.

**The Chair:** Mr Hayes has another comment, a quick clarification.

**Mr Hayes:** Just on that point, Roy, and thank you for your presentation, but just so everybody understands, there were 60 in that period that were found guilty of conflict of interest—am I correct?—and there were eight penalized out of all those 60. So that will add to the fact.

**Mr Jackson:** Over how many years?

**Mr Wilkinson:** Eighteen years.

**The Chair:** Over an 18-year period?

**Mr Hayes:** Yes. Actually, it's a 22-year period, but the fact of the matter is that there were 60 of them that were actually found guilty, so there's more.

**The Chair:** That's quite clear. Mr Wilkinson, thank you very much for taking the time to come and for presenting your brief to us.

#### RATEPAYERS ASSOCIATION OF KOMOKA

**The Chair:** The Ratepayers Association of Komoka, and there are a number of people. Welcome. Perhaps one of you might introduce all the others.

**Mr John Driver:** Okay. First of all, I'd like to say thank you so much for inviting us here today, even though I haven't had much time to prepare for this, only a week and three days. However, to my right here is Mr Henning Jenson and to his right are Mr Brian Ritchie and Mr Dave McHardy.

Anyway, I understand, sir, that we only have about 10 or 15 minutes here. I'd certainly like to give my—

**The Chair:** It's half an hour you've got, actually.

**Mr Driver:** Okay, I appreciate that.

**The Chair:** I think the point was that for your presentation, if you wanted, you could take 15 or 20 minutes, or possibly longer, to allow time for the other members to ask you questions. That was the intent.

**Mr Driver:** Okay. Yes, I understand it. Thanks very much.

I'd like to address one thing with regard to subdivi-

sions. I've been very concerned about this for a number of years and I've written letters back in the 1960s concerning land use and land abuse. I'm just going to read what I've written here.

"I'm very concerned about the way that developers purchase land in the southern part of Ontario. It certainly appears to me that no one in government or elsewhere is concerned enough in regard to the amount of agricultural land that is being taken up and taken off of food production, only to be covered with asphalt and concrete and so on.

"The land upon which most food grows in the province of Ontario is to be found in the southern hemisphere, approximately less than one third of the entire province of Ontario, yet we allow developers to rape this land. We need a change in government attitude and should start building homes and subdivisions in satellite cities north of the best agricultural land in Ontario." If we don't, we're going to be just like the codfish story.

I wrote a thing back in 1966 to the federal Fisheries minister in regard to codfish. That was back in 1966, and he wrote me back and said: "Mr Driver, we'll never run short of codfish. We have too many rules and regulations already in place to guard against what you're thinking and proposing." However, all we have to do is take a look at the devastation that it's made on the North American continent today.

#### 1520

I'm concerned. I did the same thing when I spoke to Western university back in 1966 with regard to land and land use and land abuse. So this is kind of old hat to me, but I was much younger then.

Anyway, back to this. The more agricultural land that is used for development, we will rely upon more and more imports. Big bucks will always speak louder than words. I feel we will lose more and more of our natural resources to developers.

Let's look at Komoka, Ontario, for instance. It consists of sand, gravel and huge reservoirs of fresh water, all underground. All of this underground, while developers are buying up land to build homes on it. The Komoka area is one area that is very fragile and it should be preserved as a greenbelt area because of its natural resources. In the future, we will need the resources. But when the developers get done with this, the fresh water and so on will be all gone and entirely drained off from the area, when our world is fast becoming short of fresh water.

It is time now that governmental bodies look at prohibiting cities from growing larger than 300,000 people. Now, I put that proposal before the federal and provincial governments back in 1966 and 1967, because being an old retired fire inspector and a fire marshal in this province of Ontario, we know where a lot of problems are. The bigger cities that are all in North America are going broke. It costs too much money to run them. They're uncontrollable, social-services-wise. You can't police them properly, and there are many other things that come with big cities. Therefore, you should start to consider what I've said prior to that and start building

satellite cities north of the best farm land.

But we are very concerned with our town of Komoka and the area and we're scared for the natural resources that are going to be built upon there. The land is being bought up now by developers and the red tape and the bureaucracy that you have to go through is something frightening to me. We've been doing this for months and months now and we've just come to no conclusion from governmental bodies in regard to this. They're going to press on with sewers and so on and water in there, and I think that's frightening.

**Mr Brian Ritchie:** I'm Brian Ritchie. I am a police village trustee in Komoka. I was elected on the platform that we would try and prevent some growth coming into the community that was based on condominiums.

Lobo township is the township that we're part of. It has a population of about 5,000 people, and Komoka happens to have 1,100. The outside area sees Komoka as the appropriate place for growth, and so the official plan got put in place that would represent the larger agricultural bodies' wishes, not the wishes of the people in Komoka. So the township council elected at large was primarily composed of people from outside of the urban area, Komoka.

They decided that what they wanted to try was to do a new kind of development, condominiums, in a town that's made up of single-family dwellings and senior citizens' homes. So it's an unusual mix, because what they were looking for was a higher tax rate. That is what they wanted. They wanted more commercial development down there. We are close to the Thames River. They thought that water and sewage ought to be placed into the Komoka area. So that area south of the whole of Lobo township—it wouldn't bother the agriculture at all—would be a central area to grow and get money for the community. So four fifths of the township supports the idea of Komoka growing.

What we're here concerned about is the consultation process. Komoka has over and over again at public meetings expressed its wish to be left alone to grow slowly, at approximately—this is even slow for a provincial average from what I understand. I understand that 4% is about twice the speed at which growth goes on within the Ontario, but we were prepared to grow at about 4%. They wanted a third of Komoka larger within a three-year period. They've gone about the official plan, which we objected to, in an attempt to try and get the official plan through. They did manage to. We've got an objection with the OMB on it.

The OMB is helpful that way to us, in terms of trying to stop a group of politicians who don't represent the whole community but are using a section of the community as a scapegoat for some desire they've got, which is more growth. They aren't concerned about destabilizing one community because it doesn't affect the destabilization in their community.

I have a number of questions and they revolve around the issue of consultation, I guess. My understanding, as I read through these documents that were sent to us—the Comprehensive Set of Policy Statements, Understanding Ontario's Planning Reform, the growth and settlement

policy and these laws—I know these laws were heavy going so I'm pretty sure I'm mixed up on a number of those.

I understand you're trying to speed up the process and empower municipalities and I like that. It makes sense, if growth—we shouldn't be slowing down developers if they've got the right kind of proposal going into a community. Let's help them through and get the jobs for Ontarians and allow people to live in nice communities, but the stabilization factor has got to be in place.

If my understanding is right, the official plan is where the public involvement comes into play. Somehow there's got to be this idealistic perception that people get involved before they realize there's a problem; that they've got enough foresight to say, "Hey, this could really go wrong here, so we'd better make sure the official plan is described adequately." I'm not certain that's the way ratepayers act. For the most part, they have their own personal lives that they're living and they're not looking down the road, as politicians do, for what could happen in the future and what to take advantage of and what to mix and match and reshape. So their issues aren't political issues or public issues; they're more private issues.

What you're asking in this document is that the public ratepayer be concerned ahead of time about the official plan because, after that, if I understand it correctly, those developmental permits will be provided by some clerk at the county office. Do the public get notification at that point? I'm not sure they do. Things are becoming bureaucratized at that point and so the people don't get a chance to perceive what's going to happen. I'm very much concerned about consultation.

The other thing I think might help is if—I didn't get a perception that there was a referendum of any sort coming into it. If there's some major issue that's arising that's going to cost people a lot of money—like they're bringing water and sewage to Komoka and it's costing a lot of money for the individuals in Komoka. But the rest of the community doesn't get to pay for this and they would like us to have it because it means growth in the southern part. So everyone's about to pay, from the description of the township council, a minimum of \$6,000 and upwards of \$10,000 or \$11,000 from what we're hearing. That's the people in Komoka; the rest of the place doesn't get to pay, right?

Well, the Ontario taxpayer gets to pay because there was a grant given, a grant of almost \$10 million. For a few homes—we're talking fewer than 20 homes that needed water—\$10 million has been spent and every household in Komoka is being asked to spend between \$6,000 and \$10,000 for this.

I think if you've got a perception of what I'm saying, we're stuck in a situation where the election doesn't make a difference because we're only one fifth of the community so we might get one, maybe two, councillors on who reflect our point of view; the other three are a reflection of the agricultural community who would like it to grow.

The concept of community that you're offering in this definition seems inadequate to me. It needs to be clarified so that the community is not a whole township or



municipality but, rather, portions of it can be a community as well. Maybe I've got a misunderstanding of the definition of "community" but we're acting like a municipality that's a community. We're not; we're broken into segments and there's friction going on.

1530

A referendum then could be of service if it applied to the particular area that was going to be financially indebted over the innovations.

First off, the official plan—people have got to be involved ahead of time. How do you plan on educating people so that they know they've got to be involved ahead of time? The public doesn't usually get concerned with political issues until it impacts on them.

You're suggesting that the developer's permit is something else that's going to hide the problem away because the clerk's dealing with it. How do we get educated at that point that a new development's going on and that it's been granted, and what right do we have at that time to object and take something to an OMB or to some other body and reach some compromise solution that might be more desirable?

If I can give you an example with the development that was proposed for Komoka, the condominium development—the council passed it. We argued with it, put a presentation to the OMB. Because we objected to the OMB, the issue got held up. The developer bypassed the council, came to us and asked what can we resolve and what were the main issues. One was we wanted it to be freehold, because we didn't want this large community, a third of the size of Komoka, voting on water and sewage for Komoka if it was going to come to a vote—and because they've already got water and sewage—and not provide it to a community that might want it, or prevent us from doing what was the will of the rest of the people in Komoka.

So the developer comes to us and we arrive at an agreement that allows for freehold with 76 homes instead of 124 homes. The council was caught in this bind where it wanted growth and it wanted growth at any cost, and so it gave away everything that was available to it. They weren't concerned about the impact on the schools and how much it was going to cost, because the school's already full, right? They're going to have to build another school.

There are issues here that the township council—when you develop your regulations to try and control this, or you develop your official plan, it's got to make sure the township council doesn't use forms rather freely and just vaguely describe what's going to happen.

I went through the water and sewage proposal that came out of Lobo township to get the grant. There's nowhere in it that describes why the water is in fact necessary, other than one little box that says, "nitrates: 25.4% of Komoka water samples are contaminated." We got hold of all the contaminated results and all the good results and in fact it's not that high. It's sitting around 10% or 8% at any given time, maximum, which is below the standard for giving out the grant, but the council managed to get it.

I think you can sense the frustration that we've got, and we're looking for legislative help here in providing us with access at some point to be made aware of the details so that there's total exposure of information, and we're not held up. We were held up for the longest time about the actual details of which homes had contamination, which homes had been retested. They included in those tests homes that had three wells, one well of which was good, the other two weren't being used, okay? They included in those well samples agricultural well samples from outside the communities that aren't used for domestic purposes. They used whatever was useful to get the figures up. I don't know if they intended to do that specifically, but when they took all the details of the studies, they included them all and came up with this marvellous figure.

We're looking for assistance in the legislation that provides really meaningful public consultation, not what we go through over and over again. Will this end up in a vote? Will you delay this at least until the election so it can become an issue at the election? And the answer is always: "No, we will handle it ourselves. We are a council. We've been elected to do the job."

They see themselves as elected, but they are primarily elected by four fifths of the community that's agricultural, and so your policy of saying settlement has got to go into areas of growth already puts it in Komoka's bailiwick. That makes sense to me, but Komoka should have some say in it too, and so a meaningful consultation becomes the critical issue. I think that's it.

**The Chair:** Thank you very much. There are three minutes per caucus, and Ms Haslam and Ms Haeck, as well.

**Ms Haeck:** No, Ms Haslam hasn't had a chance to ask a question, so I'll defer to Ms Haslam.

**Mrs Karen Haslam (Perth):** I think we all sit over here and say, "Yes, we understand what you're saying." A lot of us come from rural ridings or small townships that deal with larger councils. I've got a couple of questions and then I'm going to just leave it up to you.

You talked about meaningful consultation and I've got some questions. I'd like some suggestions to be sure that your input is heard. What type of suggestions do you have for us to say, "This is how our input is really heard?" You said the OMB is helpful to us. I'd like to know if you see changes in here that will help you in the process. Are there changes here that you see will help you in your input and in your concerns about being—you keep saying they represent four fifths and we're only one fifth and the majority rules and that's the truth. All I'm saying is, you want better input, what suggestions do you have?

You talked about an official plan. How do you get people more involved? I look on page 78 of the proposed legislation and I find, under public participation, "The minister shall ensure that the public is given an opportunity to participate in the preparation of the proposed development plan." So if you don't see that as being enough, what do you see us putting in that legislation? Also, if you go on to page 79 at the top, "When a proposed development plan has been prepared, the

minister shall ensure that, (a) notice is given informing the public of the proposed development plan..."

There are some things in the legislation that you're talking about. If this isn't enough, what do you see as being enough? What type of process would you like to see when you talk about meaningful consultation?

The reason I'm asking is that I'm a people person and I keep saying in any piece of legislation that I look at, where is the accountability for my citizenry, where is the opening up of the process so they have access to that, and where is the process that says they do have a say, and it's not all behind closed doors and it's not all in closed meetings?

I'd be interested to know what your suggestions are for opening up the process, for having better input and maybe looking at more meaningful consultation.

**Mr Ritchie:** Okay. To start with, is it intended that there will be a planning advisory committee in townships? If that's what is intended and they are appointed people, then we're back into the same problem: The council selects the people. I put my name forward a number of times, and other people have as well in the community to try and reflect Komoka's point of view. They're not always rejected, but they don't select people who are really outspoken, right?

I don't know how you get that. If you want a planning advisory committee, maybe it's got to be made up of a larger group where the ratepayers or whatever select the people to be on it to represent them, rather than the council selects people that represent its point of view and merely have them do it. Okay?

**Mrs Haslam:** I hear what you're saying and I'm just asking, very quickly—I also hear that councils are elected, and they're elected to lead and they're elected to make the decisions. I personally do not agree with a referendum over every tough item.

**Mr Ritchie:** No.

**Mrs Haslam:** I am elected to make tough decisions. I may not agree with all of them and I certainly have my option to voice my concern over them, but I'm elected to lead, I'm elected to review the legislation, and I'm elected to know what's best for the community. I'm just wondering whether that is the only solution.

**Mr Ritchie:** No, I don't think it has to be an election. I don't think it has to be a referendum. There are arbitrations, somebody coming in and trying to work out the differences, a feeling that you've got a kind of ombudsman approach to the situation, somebody who's going to be fairminded and not represent a particular point of view.

**Mrs Haslam:** Would that fit into what is being suggested?

**Mr Ritchie:** The OMB?

**Mrs Haslam:** Yes.

**Mr Ritchie:** Yes.

**Mrs Haslam:** So that would really be helpful to you.

**Mr Ritchie:** My understanding is that goes at the end, after you've argued with something and it's failed. I'd rather see it come earlier in the situation. We're not

getting this thing resolved. People aren't working it out too well. Let's have the mediation come in earlier and try and resolve it. Right? So the lines aren't drawn.

**Mrs Haslam:** Better—

**The Chair:** Ms Haslam, I'm sorry. Mr Wiseman would really like to make a comment. I feel in pain not giving him that opportunity.

**Mrs Haslam:** Oh sure, cut me off, that's enough, go ahead.

**The Chair:** Mr Wiseman, go ahead please. You have to be quick, though.

**Mr Wiseman:** Your presentation here is the very reason why the wording in subsection (5), "Decisions consistent with policy statements," must remain—"shall be consistent with" at the very least—because then you have recourse to the policies and the statements and the Ontario Municipal Board in a far more meaningful way than "shall have regard for" will ever give you. That's part of the legislation as well and—that's it, I can't say any more.

1540

**The Chair:** Thank you, Mr Wiseman. That was a comment, I think.

**Mr Eddy:** So that doesn't count with time. Well, I'll have some comments too, in that case.

**Mrs Haslam:** Can I have part of Mr Eddy's time?

**The Chair:** Go ahead, Mr Eddy.

**Mr Eddy:** I realize your frustration and I've seen it in other places and that's unfortunate, in view that your frustration is really with your locally elected council and your concern about the future of your own community. Unfortunately, since the Second World War, there's been a growth and development mania mentality in Ontario, I feel, and we haven't done it right in the province in that our cities have gotten too large. The thousands of acres, probably millions of acres, of the finest arable land in the world have been put under concrete and asphalt. There's no doubt about it. The province has tried the system of satellite cities and we have the Townsend fiasco and the South Cayuga fiasco that you may know about.

Your point is well made that the growth and development should be in places on land that is not arable, prime farmland because one day people are going to suffer because of it. I'm thinking more in this area because I'm a rural person of the London-Middlesex area and Sarnia township, but there are a couple of things I would say. I think you have some hope and what you must educate yourselves to and your people, if you're going to have input—you're quite right, it's got to be done at the official plan review stage. You've got to be in there and you've got to say: planning is local; it's community planning and this is our community; and this is the way it's got to be and take it to the OMB. To take individual applications to the OMB when the land has been pre-designated for development of growth puts you at a disadvantage in your area, there's no doubt about it. I know the area well: the south end of Lobo township in Middlesex county, just west of the buffer zone a bit.

I'd like to ask you if you think the annexation of



64,000 acres to the city is going to relieve your problems, or will it accentuate them because people see the city getting too big and they want to come out to a small community and live like I do in a small community, and many people see that as a distinct advantage. The other thing is the possibility of hope maybe in a county, a land use official plan rather than if the county—and I understand they have to proceed with a land use plan perhaps, and that's another area. When it comes to that, you want to be involved from day one, absolutely, so that there's a full scale—if you're not heard at it. I think we've got to remember it's community planning. Planning is a local thing and it's community and that's you, the community of Komoka.

**Mr McLean:** I want to thank you for coming today and making your thoughts known and expressing your opinions with the community that you live in. The problem we have with this legislation, I believe, is they're directing development to small-town Ontario, to hamlets or villages that have water and sewers. There's no doubt in my mind that with a population of around a thousand, they're promoting the sewage system for that very reason, and I don't see anything in this legislation that is going prohibit exactly what you want to slow down. It's frustrating but I certainly understand where you're coming from and the problem that you have because I'm from rural Ontario myself.

**Mr Ritchie:** We are bothered by what has happened, but the fact is I think it can happen to other communities, and this legislation is really your opportunity to help shape it so other communities don't go through the same process, or at least have enough input to feel they have some control over what's happening. That, I think, is the critical thing, to feel like you had some control, because if you don't feel like that, you feel like you got shafted and you're angry.

**The Chair:** Last comment, perhaps?

**Mr Driver:** Can I add as past president of the organization, the ratepayers' association, the situation that's occurred right here in Komoka, ladies and gentlemen, is so severe that I've had a number of elderly people in that community come to my door and tell me that if this thing isn't stopped there, they've now got the for sale signs on their property and they have to vacate their premises, because they're not going to be able to afford the taxes. The township has told us already the taxes will rise between \$700 and \$1,000 per unit in that village alone. That brings the average taxes on the property there to approximately \$3,000 per unit, in that area. Retired people can't heft that and they are putting their homes up for sale.

Ladies and gentlemen, as citizens of that community, they've supported that community for many, many years, but now they've got for sale signs on their properties. I think that not ought to happen in the province of Ontario or in the Dominion of Canada. Shame on us for allowing such a thing to happen to our good citizens in that community. I think something must be done with regard to the cost of that. I don't think they should be able to drive people out of their homes, but it's being done right here in Ontario and in Komoka.

**The Chair:** I thank you all for sharing some of your concerns and sharing some of your suggestions with this committee.

#### LAKE HURON PRESERVATION ASSOCIATION

**The Chair:** We invite the Lake Huron Preservation Association, Mr Joe Hoffer.

**Mr Joseph Hoffer:** Good afternoon, Mr Chair, members of the committee. My name is Joseph Hoffer. I'm a lawyer representing the Lake Huron Preservation Association.

Before I get into my comments, I'd like to thank Ms Bryce first of all for accommodating us on very short notice to appear before this committee, and I don't believe he's here, but the honourable Mr Tilson, who informed us of the circulation of this committee and really opened the door for this opportunity.

I represent the Lake Huron Preservation Association, which is an association of property owners, approximately 350 in total, who own property and live along the shoreline of Lake Huron between Goderich and Camp Ipperwash. This comprises about seven municipalities, and over the last two years they've been involved in a battle—sometimes a battle—with the local conservation authority, which was in the process of implementing what was known as a shoreline management plan.

The shoreline management plan was the product of an initiative by the Ministry of Natural Resources, and the object of it was to introduce certain planning principles along the shore of Lake Huron among the seven municipalities. It proposed some very severe land use restrictions, and it was as a result of that concern that the association was formed in 1992.

We made submissions to the conservation authority. We did have an opportunity to have changes made to the shoreline management plan, and then along came Bill 163, and we see that there is the potential to have all the gains we thought we had made completely wiped out as a result of the proposed amendments to the Planning Act.

The text I'll be using is essentially what you find at the first tab of the brief I've given you, tab A, and I'm going to be referring periodically to the other tabs. In order that you understand the nature of our objection, I would ask that you look at tab 1.

What we object to is the proposed wording of subsection 3(5) of the Planning Act. The first page at tab 1 gives you the existing wording, and we've highlighted the existing words that we feel are very important. That is, "In exercising any authority that affects any planning matter," and then I'll just editorialize, the decision-maker "shall have regard to policy statements issued under subsection (1)."

The Sewell commission made recommendations about changes to subsection 3(5), and the final version which is in Bill 163 is on the next page. It is very different from what the Sewell committee recommended, and it is very different from the existing wording. It starts by saying, "A decision," rather than making reference to the exercise of authority. It goes on to say, "...and such decisions under any other act as may be prescribed"—so decisions not just under the Planning Act but under any provincial

legislation that may be prescribed by the regulations—"shall be consistent with policy statements," provincial policy statements. The import of these wording changes I'll explain in a moment, but I wanted to highlight the words we take issue with, and the language.

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The reasons for the objection by LHPA relate to the interplay between the comprehensive policy statements, which, as you know, have been promulgated in conjunction with Bill 163, and the wording of subsection 3(5). The two can't be looked at independently, because they're very deeply interrelated.

We have approximately six objections, and the objections relate to, first of all, inconsistencies between the recommendation of the Sewell commission and what we find in Bill 163 in subsection 3(5). Before I go into the specific inconsistencies, I just want to state for the record that the directorship of this association does not understand why so much money was spent on a commission to get recommendations which, in the case of this one recommendation alone, have been departed from in six separate ways, and I propose to go through the ways they've departed from the recommendations of the Sewell committee.

First of all, I've excerpted a portion of the final report of the Sewell commission at tab 3, and at pages 12 and 13 of the final report, the Sewell commission recommended that a comprehensive set of policy statements, as contained in the report, replace the existing provincial policy statements. The comprehensive set of provincial policy statements, as contained in the report, were not adopted by the Minister of Municipal Affairs, and the language which was adopted by the Minister of Municipal Affairs in the comprehensive policy statements is vastly different from that proposed by the Sewell commission. The Minister of Municipal Affairs' policy statements are far more restrictive than the Sewell commission had recommended, and ultimately, as I will illustrate, this will work great injustices on people not just within the Lake Huron Preservation Association but people throughout the province whenever a comprehensive policy statement comes into play. So that's the first inconsistency.

The second inconsistency is found at page 14 of the report, where the Sewell commission recommended that in the short term the province adopt a comprehensive set of policy statements and that in the long term the wording in subsection 3(5) be amended from "shall have regard to" to "shall be consistent with." What we've done in the short term is (1) adopted a different set of comprehensive policy statements and (2) we are also in the short term adopting the language change that the Sewell commission recommended. That's inconsistency 2.

The commission's recommendation at page 15 of its report, which again is at tab 3—I'll just look at it. It's in the first column, about halfway down:

"The commission is recommending that the act be amended to state that the exercise of any authority that affects any planning matter" etc "shall be consistent with...." The language recommended by the commission was "the exercise of authority" shall be consistent, not "a decision" shall be consistent. In my submission, there is

a great difference between whether or not a final decision or an interim decision is consistent and whether or not a particular planning agency has exercised its authority in a manner that is consistent with the provincial policy statements.

If you go on to the recommendation, you'll see as well that that was the specific recommendation by the commission and that was contained in the summary final report as well. So that's another inconsistency that we find.

A fourth inconsistency is the reference in Bill 163 to "such decisions under any other act as may be prescribed." Nowhere in the Sewell commission, and certainly not in the recommendations, have I been able to find the suggestion that the Lieutenant Governor in Council by regulation incorporate decisions made under the Building Code Act or the Environmental Protection Act or the Conservation Authorities Act somehow, magically, into the Planning Act. So again we have another inconsistency with the Sewell recommendations that has a substantive effect on this section.

Another inconsistency that has occurred in practice is that at page 16 of the Sewell commission report, the commission recommended that there be a further opportunity for comment on the comprehensive policy statements.

We did participate in that further opportunity. We received a letter from the Minister of Municipal Affairs. We sent back some correspondence. We were told it was much appreciated, and then the next thing we saw was the final set of comprehensive policy statements, which were completely different, in my submission, from what the Sewell commission recommended.

And nowhere in this process were people who live in floodplains or who live in heritage areas or who live along the lakeshore informed about the proposed comprehensive policy statements and informed about the effect that those policy statements would have on a day-to-day basis on those people. There was just a letter that came to certain people who'd been involved in the process, and in our submission, the people who were affected by this comprehensive policy statement should have been given notice, should have been told what the import was and given a proper opportunity to make submissions to the minister on it.

Another departure from the recommendations was the recommendation by the Sewell commission that the comprehensive policy statements be reviewed every five years. I haven't found that in Bill 163. That recommendation was put in, if you read the commentary, as a result of the Sewell commission's recognition of the very significant status that the comprehensive policy statements would have and that there would be problems if there was not a process of checks and balances for amending those comprehensive policy statements. Again, it's a recommendation that's been ignored in Bill 163.

It's LPHA's position that the existing language in subsection 3(5) of the Planning Act should be maintained. Alternatively, it's respectfully submitted that the full recommendations of the Sewell commission should be implemented before an amendment to subsection 3(5) of



the act is made, and when such an amendment is ultimately made, it should be in the language recommended by the Sewell commission and not in the language recommended by the Honourable Minister of Municipal Affairs.

The first inconsistencies that I've just outlined to you in our objection all relate to the inconsistencies with the Sewell commission report. Our other objections I'll run through fairly quickly.

The second objection is that the proposed amendment will radically alter the nature of decisions made respecting land use planning in Ontario. When the language of the proposed amendment is isolated, it's clear that it constitutes a very radical amendment. A municipal council or the Ontario Municipal Board will no longer be asked to decide whether a development proposal is in accordance with sound planning principles. Instead, the issue will be, will this decision be consistent with the comprehensive policy statement?

This shift in issues will ultimately permit unfair and discriminatory decisions to occur. Such decisions cannot be challenged in any meaningful way at law, because the only issue, again, is, is it consistent with the policy statement, and you can't appeal the policy statement. It's a separate document altogether from the Planning Act. Many of the planning disputes that now go before the Ontario Municipal Board, as you know, are decided on issues of whether or not the proposal represents sound planning principles and sound planning policies. That's usually answered by a specialized tribunal through expert evidence. That forum will not effectively exist when you're dealing with provincial policy statements. All you really need is somebody who can read the policy statement and tell the OMB what it means.

For LHPA members, the clearest illustration of the problems associated with the proposed amendments to the Planning Act can be found in the policy statement dealing with natural heritage, environmental protection and hazard policies. They're set out at tab 2 of the brief, and goal 3 of the natural heritage policy statement provides that "development"—it's an absolute prohibition—"will not be permitted within: (a) the regulatory dynamic beach standard; (b) the regulatory flood standard within the defined portions of the 100-year flood level along the connecting channels...." The term "development", if you look at it, includes, "the construction, erection or placing of a building or structure of any kind; or the making of an addition or alteration to a building or structure that has the effect of increasing the size of usability thereof...." That's a sweeping definition.

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Many LPHA members already live in the regulatory flood standard and the dynamic beach standard area. There are many homes located in that defined area. Their homes have been on the property, in many cases, for generations. These people would not be permitted to build a patio deck, put in a flower bed, insulate their cottage, add a washroom or even put a pup tent on their property if the strict requirements of this policy were followed.

There is some potential for relief through policy 3.1.3, which states that "Development may be permitted," and then it lists some criteria, and I'll just highlight one. The

proponent would have to demonstrate that "no adverse environmental effects will result." That's extremely vague. I would say that it can mean just about what anybody wants it to mean.

The reason I highlight these two sections is to illustrate that there's an absolute prohibition, there's some permissiveness, but it's at the absolute discretion of the decision-maker, and all that has to be justified when a decision is made is not why the proposal was denied but why it was granted. So whoever has to make the decision doesn't have to justify their response if it's a refusal.

The harshness of the policy and the effect of subsection 3(5) of the Planning Act is best illustrated when you consider the case of an individual whose home is located within a regulatory zone, as many of these are, and is destroyed by fire. So you've got somebody who's had a home there for 80 or 100 years. It's destroyed by fire.

The home owner would be precluded by these policies and the wording of subsection 3(5) from rebuilding their own home. The only way they could do that would be in the absolute discretion of a municipal council or a local conservation authority, and I haven't looked at the details of all the other policies, but whoever the provincial decision-maker is would have the absolute discretion to decide whether or not Mr and Mrs So-and-so and their family can reconstruct their home.

A refusal to give relief could not be challenged because of the wording of subsection 3(5) of the Planning Act, and an informed insurance company would never ensure a home like that, because if you couldn't rebuild, they would have to pay the land costs of moving to another site outside of this zone that's been defined, and a mortgage lender would no way mortgage a property located in those zones that's going to be subject to the absolute whim of a decision-maker.

If you think it through, there are all kinds of other implications. Is the province going to be required to compensate someone who's lost their home as a result of this, because it's been characterized in one case as a form of expropriation. Who's going to pay the property taxes or make up for the shortfall on the property taxes when these homes plunge in value because they can't be insured or mortgaged? These are all some of the fallout that can occur as a result of this wording.

Now, just so you know I'm not dealing with this in the abstract, I've appended two examples of where this type of decision-making has occurred in this province and where, if these policies and this section of the Planning Act was proclaimed, those home owners wouldn't have their homes and their property in exactly the same fact situation.

The first example is at tab 7. I'm not going to take you through the case, but this is a case where I represented the home owner. What happened was, she bought a piece of property that was located in an area controlled by a conservation authority. It was in London, and the buildings had been there for 80 years. They'd survived Hurricane Hazel and the great London flood and just about everything else, and they were still standing when she bought it.

She started making renovations to the interior of these buildings, and a member of the conservation authority came along and said: "I'm sorry, you can't do that. You need our permission if you want to do that, because you're in area that we control." She said, "Well, how do I go about getting permission?" He said: "Forget it, you're not going to get permission. We wouldn't give you permission. This property has been on our acquisitions list—which is unpublished—"for the last 20 years." She said, "What can I do with my property?" He said, "The conservation authority is prepared to pay you"—and he gave her a figure which was \$150,000 less than she had paid for it 18 months earlier.

She was very upset by that. She challenged that, and she went to court, and the only reason she won was because of the construction of the Conservation Authorities Act which the court placed on a particular regulation in a section of the act.

If these amendments are put in, she would lose that case, and not only could she lose it because of the effect of the amendments on the decision-making under the Conservation Authorities Act, but the building inspector could easily say to somebody, "I don't care if the conservation authority's approved it; the comprehensive policy statements say that development is prohibited and I don't have to approve it," and you couldn't challenge that decision because it would be consistent with the provincial policy. So that's the first example I wanted to give you.

The second example is even worse. It involves a family who lost their home to fire in the Ottawa Valley and, again, they were located in an area controlled by the local conservation authority. They wanted to rebuild. They were refused permission to rebuild because of the location of their home. They were told that if they wanted a home, they'd have to get it somewhere else; they couldn't build in this particular location.

Again, they went to court. They were ultimately successful because of the construction that the judge put on the language of the Conservation Authorities Act and regulations, but it's another case where they would not have been successful had this legislation that's proposed in Bill 163 been proclaimed.

It's something that does have concrete and profound ramifications. The same ramifications extend to the 350 members of the Lake Huron Preservation Association and everybody else who lives along the Great Lakes in the province of Ontario. That's the second objection: that decision-making will be severely altered as a result of this proposal.

I've already outlined the objections listed at page 13 of my submission. The public has not received adequate notice of the effect of the proposed policy statements in combination with Bill 163 and has not been given a meaningful opportunity to participate in the policy-making process.

Number four, the policies are too inflexible and do not contain a mechanism for review and amendment. The Sewell commission's proposed policies were flexible. They were more permissive. If a people could demonstrate that, for example, they could meet the flood-

proofing criteria and that other things could be safely done, then their proposal could go forward. The Ministry of Municipal Affairs has done the reverse of that. They've put an absolute prohibition, and then said, "We may allow you to do something if you can do A, B, C or D." But you know the importance of that word, "may." They don't have to do anything, even if you do satisfy all of the criteria.

I should point out in the Stacey decision, which is the last case in this brief, that was a case where the home owners were proposing floodproofing measures to ensure that their property would not be destroyed in a flood and they were still rejected outright by the conservation authority and the local municipality.

In conclusion, I'd like to reiterate that LHPA recently ended a two-year battle to effect some changes to a document which purports to be an implementation of a provincial policy. The SMP purports to implement what is now known as the Great Lakes-St Lawrence River policy statement. Having gone through that battle, they are now faced with another provincial initiative which could well destroy any gains they've made over the last two years. After reviewing the provincial initiative in Bill 163 in some detail, LHPA has concluded that the proposed amendments to subsection 3(5) of the Planning Act will adversely affect its constituents' proprietary interests and will also affect the interests of other members of the public throughout Ontario.

The proposed legislation is not consistent with the Sewell commission recommendations and will introduce a system of planning in this province which will leave many members of the public open to the whims of local and provincial decision-makers. It will restrict the fair and independent decision-making of the Ontario Municipal Board and will inevitably cause hardship and frustration for members of the public who happen to be affected by these policies and who happen to live in an area where the public agenda and private interests are not necessarily consistent.

To avoid the adverse consequences of the proposed legislation, we urge you to reject the proposed amendment to subsection 3(5) of the Planning Act and to retain the original language which is now in the Planning Act. Alternatively, we request that the premises which form the basis for the Sewell commission recommendations be implemented before any amendment to subsection 3(5) of the Planning Act is adopted and we ask that such implementation occur prior to the language of subsection 3(5) being amended. If the language is to be amended, then it should be amended in the terms recommended by the Sewell commission and not that proposed by the Minister of Municipal Affairs. Thank you for listening to me.

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**Mr Eddy:** Thank you for your presentation, a very complete presentation, and I'll be happy to review it in further detail at my leisure.

You've stated the concerns, and I think I'll just point out one thing. We're told that the new terminology, "must be consistent with," is flexible and does provide flexibility. The ministry has told us this on several occasions. It's stronger than "have regards to". The prob-



lem, we're told, is that "have regards to" means, you know, you open the book and then close it. But this is still flexible. Now, you're saying it's not, and that is one of the major concerns that you have, I feel. Is that correct?

**Mr Hoffer:** Yes. The reason it's not flexible is because a decision that is made has to be consistent with some other document that is not part of the Planning Act—

**Mr Eddy:** Right.

**Mr Hoffer:** —and that document is inflexible. You can't appeal it, you can't challenge it, you can't—

**Mr Eddy:** Not subject to review.

**Mr Hoffer:** —do anything about it. The provision in the Planning Act which would require a review of it once every five years has not been included, so in my submission it's very inflexible.

**Mr Eddy:** You say that the bill is inconsistent with the Sewell commission in so many areas.

**Mr Hoffer:** Yes.

**Mr Eddy:** Thanks for your information.

**Mr Curling:** I just wanted to emphasize that, because it's exactly what Mr Sewell said when he presented his case before us, before coming on the road here, the inconsistency of the bill and what he, in his report, reflected. He was extremely concerned about that, and I see that you have endorsed that.

I think this is a well-put report and it's something that we will reflect on, and I hope the government also will look at it in more detail.

**Mr Jackson:** I'll just commend you, Mr Hoffer, for the depth of your presentation and say I share many of the concerns you've raised. When I look at the Crombie commission and its designation of large tracts of land in the urban areas I represent in the greater Toronto area, this concept has been raised about your house burning down and then all of a sudden going to City Hall and finding out that we have a provincial interest in your land and therefore—and we're talking lakeshore properties worth \$1.5 million—now saying, "Well, sorry, we have a provincial interest here and we'd like to make this part of a parkette or something." That's a real, legitimate fear within this framework now, so I thank you for bringing it forward to the committee's attention, and hopefully we'll have a chance to debate it.

**Mr White:** Thank you very much for your very well reasoned and well articulated presentation, Mr Hoffer. I just wanted to check on a couple of points. You're arguing on behalf of cottagers who have basically cottages that have been in their families often for generations. These are properties that were constructed in the flood plain that would not be permitted now, so they're anomalies, in a way.

**Mr Hoffer:** No. With all respect, if I can explain, some of these are cottages, others are homes. These people live there year-round.

**Mr White:** But all these buildings are within the flood plain.

**Mr Hoffer:** No. These buildings are located along the

shoreline of Lake Huron, and it was never designated as flood plain or anything of that nature until the shoreline management plan was finally approved earlier this year. They undertook numerous studies and they determined that a line should be drawn along the lakeshore and that everybody who was on one side of the line would be regulated in the terms reflected in this policy, and everybody on the other side of the line would be okay. So that's how it came about.

**Mr White:** So this is under the flood plains policies that were adopted in the late 1980s.

**Mr Hoffer:** No. I used the provincial Great Lakes flood plain policy statement for two reasons; one, it relates to the two cases that I've attached to the back, but the idea of shoreline management plans, according to the conservation authority, came about as a result of the Great Lakes-St Lawrence River policy statement. So that was one of the sources for—

**Mr White:** Are you arguing for the right of those property owners to expand upon their properties, to enlarge upon them?

**Mr Hoffer:** It depends on what you mean by that. Let me give you an example. There are many people, particularly as they approach retirement age, who would just as soon sell their home in the city and then winterize their cottage. That increases the usability of the cottage. It's prohibited, okay? Many people have been doing it for years, but now it's prohibited. There are people who might like to put another washroom in, maybe one upstairs, because a lot of these are very large homes. You can't do it because you're increasing the usability of it.

If you take it to the extreme, a five-member family couldn't move into a cottage that a two-member family was moving out of because you're increasing the usability of it. I mean, that's the type of thinking that can expand out of the definition of development that we have in the comprehensive policy statement.

**The Chair:** Thank you, Mr Hoffer, for coming and for presenting your brief to us today.

ONTARIO MUNICIPAL WATER ASSOCIATION

**The Chair:** We invite the Ontario Municipal Water Association, Mr Tom Warwick. Welcome.

**Mr Thomas Warwick:** Thank you, Mr Chairman, ladies and gentlemen. I appreciate the opportunity to speak to you. I want to make a very short presentation, which will be a relief to you. I know you've had a long day.

My name is Thomas Warwick. I'm a lawyer in the town of Blenheim. Blenheim is a small county town located south of Chatham. I have been in practice since 1964. During that period of time, to give you a background of my experience, I have been a member of the Kent County Board of Education, the high school boards, and for the past 12 or 15 years I've been a member of the public utilities commission.

My presentation today is on behalf of the Ontario Municipal Water Association. That association is the flip side of the coin to the electrical association, which has already made a presentation to you today. We represent the majority of the potable water suppliers in the province

of Ontario. We have something in the neighbourhood of 250 members.

To preface my remarks, I will say that the OMWA supports the submission of the Municipal Electric Association, and I'm familiar with their submission to you. Today, however, I would like to zero in on schedule B of Bill 163, in particular three sections.

The first section is section 18. If my interpretation of subsection 18(2) is correct, it appears that you would be permitting municipalities to act as their own insurers. My concern is this: Does that not affect the no-fault highway insurance provisions that are presently in effect? If it takes the no-fault highway provisions out as far as the municipality is concerned, I think you are exposing municipalities to a tremendous liability situation. You're going to see an awful lot of lawsuits under the tort system developed if that is the intention of that section.

So I want to bring notice to your committee today that I feel that section might be a minefield and you should be aware of it. I think it could add tremendously to the costs of running a municipality if that is in fact the interpretation of that subsection.

**Mr Wiseman:** What number is it?

**Mr Warwick:** That's subsection 18(2) of schedule B. That's on page 99. If you read it, it says: "The Insurance Act does not apply to a municipality acting as an insurer for the purposes of subsection (1)."

Now, does that do away with the no-fault, as far as municipalities are concerned, with motor vehicles? I don't know. I would think that's what it means, and if that's the case—

**The Chair:** Let's get a quick comment on that.

**Mr Sidebottom:** The reference in section 18 is only to the insurance that's required under this act, not to all liability incurred by municipalities. It's simply that for the purposes of the Local Government Disclosure of Interest Act, and then this section follows. This only applies in respect to that, not in respect to all insurance the municipality may be required to cover.

1620

**Mr Warwick:** If that's the case, fine, but if isn't the case and if a municipality can use that section for insuring its vehicles, then we may have a problem.

**Mr Sidebottom:** This section is no different than what exists in the current Municipal Conflict of Interest Act.

**Mr Warwick:** Okay. That was my off-the-cuff concern right there.

Now the next section I want to turn you to is subsection 2(3), and the page number there is page 89. This section deals with conflicts of interest and it deals with husbands, wives and children. My concern is this: What about other immediate family members? What about brothers, sisters, mothers and fathers?

I sit on a municipality, on a public utilities commission. There is a member who also sits on the same commission who sells us insurance. His argument is that the insurance company is his brother's.

**Mr Wiseman:** Is he the agent?

**Mr Warwick:** He's an agent, but he's not a shareholder of the company. See what I'm getting at? Now, I think that's a conflict.

**Mr Eddy:** No.

**The Chair:** Please, Mr Eddy.

Please make your comments and then when we get to the questions, they may ask clarifying questions of the staff.

**Mr Warwick:** All right. My point is this: I think if you want to be really fair about a conflict, you should expand the family members in that section. You should bring in brothers, sisters, mothers and fathers; in other words, immediate family members. You shouldn't stop at husband and wife or children. All you have to do, if you have a company that has a contract with the municipality, is have the shares owned by your brother. I do feel that there are conflicts existing, and because of the limitation, the people aren't being adequately protected from these conflicts.

So I bring that to your attention. I have seen it in my experience. I am a municipal lawyer as well, and I question that. I would think that if you're going to bring in spouses and children you should expand it to other immediate family members. I know you've got to cut it off somewhere, you can't go on to third cousins, but I do think that you should include brothers, sisters, mothers and fathers, period. I'm very surprised that that's not in there.

**Mr Wiseman:** Couldn't we have amended that by saying that they can't act as an agent for family members?

**Interjection:** He's done it again, Mr Chair.

**The Chair:** Please go ahead with your presentation.

**Mr Warwick:** I just bring that to your attention. I'm surprised at the wording here. Quite often you wouldn't have children involved because they're too young anyway. I do think that if you want to fairly deal with conflict situations, the terms should be expanded to include immediate family members.

Now, the other section is section 6, and this is also the section that was brought to your attention by the electrical association. If you are really serious about passing section 6, you are going to have a very, very difficult time in getting people interested and running for municipal government. Nobody who is really qualified will want to expose himself to filing financial statements.

During the time that I've been involved in municipal government, which spans 30 years, I have seen the quantity and quality of candidates deteriorate. You don't have the same type of people sitting on councils today that we had 30 years ago. You don't have good business people getting themselves involved. It was bad enough when you had to go for a three-year tenure over a two-year tenure. If you had more business people involved today, you might not have the deficits that you have today. I do think that if you are serious about having people file financial statements, you're going to find that a lot of people aren't going to run any more.

A lot of people don't even know that this is even being proposed. I've mentioned it to a lot of people in our area



and they're amazed that you're even thinking about passing such a section. I've had people tell me, I've had other councillors tell me, I've had clerks tell me, that it's going to make it very difficult to get good business people today to run if they have to file these disclosure statements. For how long should the secretary retain this disclosure statement, and what happens if none is filed, and how confidential are they? People just aren't going to do this.

My experience in going before councils today in the rural areas—back 30 years ago when we went to council meetings, we asked for decisions. Council made the decisions. Today, when you go before councils, they hedge around, they look to the executive administration for answers, simply because they're not qualified to be sitting there. You've lost your business people; the business heads are going. I'm suggesting to you that this is a real minefield if this is passed. You may not like what I'm saying today, but I think if you're really honest about it, it's the truth.

Those are the only three points I want to bring to your attention. I'm not going to belabour, and if you have any questions, I'll be quite happy to try to answer them.

**The Chair:** Very well. Thank you.

**Mrs Haslam:** I was going to be so nice and then I heard some things that really made me—

*Interjection.*

**Mrs Haslam:** —made me question. Yes, you all know I can.

First of all, I'm going to leave Mr Wiseman's comment for clarification on how we could address that concern regarding wording that would mean you couldn't buy from an agent but you could buy from the brother-in-law's company as long as the agent wasn't sitting at the table with you. I think that's certainly something that we can look at.

But what you said that really got me going was that we were not getting anybody into council, or anybody to run—we were not getting truly qualified people. Boy, do I take offence at that, because I think we've opened up our government to more disabled people, more women, more working people. I do not consider them not qualified to hold positions. I consider that they have various opinions on how policies should come forward that may not agree with "the businessman," but that doesn't make them any less qualified to hold those positions.

I think of situations where we have one or two gentlemen who own a large downtown core area in the city. The decision to move buses from that end location may not seem to some people to be a big decision, but unless we knew that that person owned a lot of the business around there—that colours his decision, not the decision as to whether a better location would be better for seniors or disabled or students who get off at the end of the line.

I feel that opening up the process and making it a more open government does not hamper people from running. If saying to someone, "You must indicate that you own mortgages or have a business interest," will preclude that person from running, then it makes me ask why they ran in the first place, if they're so adverse to

saying, "This is the kind of business I have," or, "This is the kind of job that I have."

So I believe in accountability, I believe in citizen input, I believe in open government, and I fill out the forms that say I have a mortgage, I own a car, my two children have a \$500 bond, and that's the extent of it. I don't have a problem with that. If I'm running for any other reason than the fact that I like to participate in changes and I like to see government opened up, then I shouldn't be running for that job.

1630

**The Chair:** Mr Wiseman, a brief comment or question?

**Mr Wiseman:** It's a very brief comment or question. This comment about deficits: My understanding is that municipalities for the most part do not have deficits, that they're deficit-free because there are restrictions on that. If business people and others were so good at balancing budgets, then why has the federal government, with a \$450-billion deficit, tripled in the last nine years when 76% of the members who were elected were in fact business people? Also, I think Confederation Life and Olympia and York and the way that business people run those large corporations on leveraged buyouts, on borrowings from banks, are a major problem in terms of what is happening.

Putting huge malls in downtown cores that destroy the old streetscapes of towns is a major problem as well. It seems to me that a lot of those things are done at the request of the business community. Local communities and residents and ratepayers' associations come forward and say: "Don't do that. That doesn't make a whole lot of sense." Yet when it happens and when the predictions of the ratepayers and average people come true, somehow or other the businessman comes out of it looking like he was the brilliant one even though it was his idea in the first place that destroyed the economy of downtown centres. So you're not going to get a lot of sympathy from me for that comment.

**Mr Curling:** Mine will be pretty short. I want to thank you for your contribution very much.

**The Chair:** Thank you, Mr Curling.

**Mr Warwick:** May I respond?

**The Chair:** Yes, please, to any of the comments that have been made.

**Mr Warwick:** I'm not suggesting that I don't encourage non-business people from sitting on councils. I'm saying that I want to encourage some business people to sit there and to give us a business insight into how to run a business. A municipality is a business. I always feel more comfortable when I vote for a Prime Minister or Premier who is someone who has made a payroll once in his life, not an academic. I always find from my experience that when you turn to a business-inclined person, they will have some idea that I hadn't even thought of before and can be very assisting in running the business of a municipality. The clerks don't have that business experience, and sometimes the business people will assist the clerk, the administration, from a business perspective. But I know in our area, and I can only speak for the area

I come from, a lot of the business people have told me that if they have to bare their soul financially and tell us what's in their bank account and what they're worth, they are not going to run, because they don't feel it's anybody's business.

*Interjections.*

**The Chair:** Hold on, please. This is a comment that Mr Warwick is making.

**Mr Hayes:** I think it has to be clarified; I'm sorry.

**Mr Eddy:** There might be further comment on it.

**The Chair:** Mr Hayes, do you want to clarify that?

**Mr Hayes:** Tom, I think we have to clarify that part about the conflict, because we're not asking people to let the public know what their worth is and how much money they owe and things of that nature. This legislation is not going in that—like, they have to divulge where their income is coming from in the first place. You're a solicitor. Your income comes from your—

**Mr Warwick:** But don't you have to indicate the amount?

**Mr Hayes:** No, not at all, Tom. We have to do that.

**Mr Warwick:** Yes, I realize you do.

**Mr Hayes:** But no, it is not going there, Tom. Not at all.

*Interjection.*

**Mrs Haslam:** Where you know where your conflict is.

**The Chair:** Mr Warwick, if you want to complete some of your thoughts, please do.

**Mr Warwick:** No, I just wanted to bring that out. That was a major concern we had, that we're going to

discourage people from running if they have to bare their soul financially. If they do, then you're going to find a lot of people are going to say: "No, I'm not going to run. I don't feel it's anybody's business. I don't want to make a disclosure of my financial matters." In a small municipality, as you know, Mr Hayes, that information is public. That's why some people bank in Chatham and do their business in Blenheim.

**The Chair:** You clarified that.

**Mr Warwick:** But if I can have that assurance that this is not the case—

**The Chair:** That has been communicated already.

**Mr Hayes:** That's right. You have our assurance of that. We've got opposition members here who are agreeing with us.

**Mr Curling:** For the first time all day.

**The Chair:** Mr Warwick, we thank you very much for communicating your concerns to this committee and for taking the time to come.

**Mrs Haslam:** Would you like to have a draft of what a conflict-of-interest form looks like?

**Mr Warwick:** Sure.

**The Chair:** A few reminders to the members. Those of us who are going by bus to our next committee hearing in Midhurst will be leaving from Queen's Park at 7:30 in the morning.

**Clerk of the Committee (Ms Donna Bryce):** Tuesday, September 6.

**The Chair:** Tuesday. Did I say Monday by any chance? No, I didn't. Tuesday, September 6. This committee is adjourned until that time, 9:30 am in Midhurst.

*The committee adjourned at 1636.*





## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**\*Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

Bisson, Gilles (Cochrane South/-Sud ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

**\*Curling, Alvin** (Scarborough North/-Nord L)

**\*Haeck, Christel** (St Catharines-Brock ND)

Harnick, Charles (Willowdale PC)

Malkowski, Gary (York East/-Est ND)

Murphy, Tim (St George-St David L)

Tilson, David (Dufferin-Peel PC)

Wilson, Gary, (Kingston and The Islands/Kingston et Les Îles ND)

Winninger, David (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Eddy, Ron (Brant-Haldimand L) for Mr Murphy

Grandmaître, Bernard (Ottawa East/-Est L) for Mr Chiarelli

Haslam, Karen (Perth ND) for Mr Winninger

Hayes, Pat (Essex-Kent ND) for Mr Malkowski

Jackson, Cameron (Burlington South/-Sud PC) for Mr Harnick

McLean, Allan K. (Simcoe East/-Est PC) for Mr Tilson

White, Drummond (Durham Centre ND) for Mr Bisson

Wiseman, Jim (Durham West/-Ouest ND) for Mr Gary Wilson

### **Also taking part / Autres participants et participantes:**

Ministry of Municipal Affairs:

Hayes, Pat, parliamentary assistant to minister

McKinstry, Philip, acting director, municipal planning policy branch

Sidebottom, Peter-John, senior policy adviser, local government policy branch

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Stobo, Carolyn, research officer, Legislative Research Service



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Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Tuesday 6 September 1994

## Journal des débats (Hansard)

Mardi 6 septembre 1994

Standing committee on  
administration of justice

Comité permanent de  
l'administration de la justice

Planning and Municipal Statute Law  
Amendment Act, 1994

Loi de 1994 modifiant des lois  
en ce qui concerne l'aménagement  
du territoire et des municipalités

Chair: Rosario Marchese  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Tuesday 6 September 1994

Mardi 6 septembre 1994

*The committee met at 0933 in the County of Simcoe Administration Centre, Midhurst.*

PLANNING AND MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT DES LOIS  
EN CE QUI CONCERNE L'AMÉNAGEMENT  
DU TERRITOIRE ET DES MUNICIPALITÉS

Consideration of Bill 163, An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes related to planning and municipal matters / Projet de loi 163, Loi révisant la Loi sur la planification et l'aménagement du territoire de l'Ontario, la Loi sur les conflits d'intérêts municipaux, et modifiant la Loi sur l'aménagement du territoire et la Loi sur les municipalités et modifiant d'autres lois touchant des questions relatives à l'aménagement et aux municipalités.

## COUNTY OF SIMCOE

**The Chair (Mr Rosario Marchese):** I'd like to call the meeting to order. We apologize for being a few moments late, but we're here and we're ready to go. We invite the county of Simcoe, Mr Ian Bender and Mr David Caldwell, to begin. Welcome to this committee. You have half an hour. What we try to remind people is that if you want the members to ask you questions, please leave as much time as you can within that half-hour for the members to do that.

**Mr David Caldwell:** Mr Chairman and committee members, it's my pleasure to make a presentation on behalf of the planning committee for the county of Simcoe. Have copies of our presentation been distributed?

**The Chair:** Yes, they have.

**Mr Caldwell:** Okay. The submission we're making today has not been presented to the county council floor. The planning committee recently had the opportunity to review what we're presenting. It will be presented to the county floor at its next regular meeting in September.

The county of Simcoe welcomes the opportunity to provide comments to your committee regarding Bill 163. We believe it's a very important component of Ontario's legislative framework.

Our comments will relate to the Planning Act portions of Bill 163. Planning Act reform is due and should reflect the objectives of streamlining the decision process, providing clear provincial guidelines for planning decisions and recognizing the growing sophistication of municipal planning by granting autonomy to municipal decision-makers.

The importance of the Planning Act is not only that it sets out procedures but that it establishes a provincial-municipal relationship; it sets the tone. Planning decisions invariably bring municipalities face to face with the province, if only through the OMB. Our specific comments on Bill 163 will relate to items which we believe can be improved in this context. Most of the changes the county either supports or takes a neutral stand on. We tried not to nitpick.

The bill: Provincial policy statements: Provincial policy statements provide the guidelines to achieve planning objectives endorsed by the province and, for the most part, by municipalities. Presently municipalities and other local agencies must have regard to the policy statements. The objectives of the policy statements must be included in planning documents such as official plans. Planning decisions, including those made at the OMB, take them into account. In other words, the system is working well now to achieve the planning objectives.

The proposal is to change "shall have regard to" to "shall be consistent with." That would probably make little difference in the day-to-day application of the policy statements. However, if the interpretation is that "consistency" requires unthinking adherence to the letter of the policy statement, then it could have two bad side-effects: unwise decisions in light of all facts and evidence and further slowing the planning decision-making process, possibly through unnecessary, costly OMB hearings.

Application of policy statements should be like the application of photo-radar: The decision to issue tickets is based on factors such as average speed, road conditions and others. We understand it is not to force all traffic on the 401 to travel at 100 kilometres per hour or less at all times.

We recommend that the proposed new section 3(5) of Bill 163 be deleted and that section 3(5) of the present act be retained.

Delegation of official plan approvals: It is well known that the province has for a few years been anxious to rationalize a planning approvals process that has been highly centralized with the Ministry of Municipal Affairs. However, to this point it has taken a go-slow approach to decentralization, pending the establishment of a clear and comprehensive set of provincial planning policies. In addition, it would seem reasonable that before an upper-tier municipality could be delegated approval authority for lower-tier plans, it should have its own official plan in place.

The provincial policy statements satisfy the first



condition. Upper-tier official plans, not whether the upper tier is called a county or region, should be the other condition to delegation of the authority. We believe there is no evidence to justify treating counties and regions differently regarding approvals authority.

We recommend that the proposed sections 17(2) and 17(3) be deleted and replaced with the following wording:

"17(2) Despite subsection (1), the regional council, the district council or the county council, as the case may be, is the approval authority in respect of the approval of an official plan of a local municipality in the regional municipality of Durham, the regional municipality of Halton, the regional municipality of Hamilton-Wentworth, the regional municipality of Niagara, the regional municipality of Ottawa-Carleton, the regional municipality of Waterloo, the district of Muskoka, the county of Bruce, the county of Grey, the county of Hastings, the county of Lambton, the county of Oxford, the county of Prince Edward, the county of Victoria and the county of Wellington for the purpose of this section and section 22.

"(3) Despite subsection (1), on the day the minister approves all or part of an official plan of the regional municipality of Peel, the regional municipality of York, the county of Peterborough or any other county, the regional council or the county council, as the case may be, is the approval authority in respect of the approval of an official plan of a local municipality in the regional municipality or the county."

Delegation of subdivision approval: The same arguments can be made for subdivision approval authority as for official plan amendment approval authority. The decision to delegate the approval authority should be based on the ability of the upper-tier municipality to meet criteria, such as having its own approved official plan, rather than the arbitrary title of "county" or "region."

In the case of the county of Simcoe, subdivision approval authority was identified by the province for delegation at the time of restructuring and the passage of Bill 51, An Act respecting the Restructuring of the County of Simcoe. We believe that all upper-tier municipalities should receive equal treatment. If they meet the criteria, delegation should occur.

0940

We recommend the following wording for section 51:

"51(1) If the land is in a local municipality that is in a county, other than a city, and that forms part of a county for municipal purposes,

"(a) The county council is the approval authority for the county of Bruce, the county of Grey, the county of Hastings, the county of Huron, the county of Lambton, the county of Oxford, the county of Prince Edward, the county of Victoria and the county of Wellington.

"(b) The county council is the approval authority on the day the minister approves all or part of an official plan for the county of Peterborough or any other county.

"(c) The minister is the approval authority in all counties without approved official plans for the purposes of this section and section 51(1)."

Note: References to county of Oxford in section 51(5)

could be removed if this amendment is approved.

Municipal planning authorities: Sections 14.1 to 14.9 provide perhaps the most serious threat to the achievement of the province's own objectives.

While municipal planning authorities may be seen as a positive force to achieve planning in certain circumstances, the possibility of their formation creates a disincentive to the efforts to plan at a county-wide level. The situation could become ludicrous where a county is prescribed or told that a county plan is necessary. Sections 14.1 to 14.9 would enable sceptical local municipalities to thwart or at least cause confusion and delay in the preparation of a plan that the province wants to see.

We propose that the province recognize its own preferences for a county plan by bringing in the following changes to Bill 163.

Section 14.1(2) is deleted and replaced as follows:

"14.1(2) The council of a municipality shall not pass a bylaw under subsection (1):

"(a) If that municipality forms part of a county for municipal purposes which has an approved county official plan or which has been prescribed under section 17(7); or

"(b) Unless the proposed bylaw is approved by the minister."

Delete section 14.3(5).

Rationale: Existing county official plans evolved in those counties which first established planning departments through the use of the county levy. This provision will discourage the formation of planning departments in counties and will prevent new county official plans from evolving.

Conclusion: The above changes will, we believe, clarify the objectives of both the province and the municipalities to streamline, to provide realistic planning guidelines and to solidify the role of upper-tier municipalities in the planning process. In other words, counties can and should plan.

There's an addendum. As noted, the main concern of the county of Simcoe with Bill 163 is sections 14.1 to 14.9 dealing with the creation of municipal planning authorities. We make the argument that the threat of municipal planning authorities is as much a problem as their establishment.

In the case of the county of Simcoe, we have gone through a major restructuring program since 1990. During that period and at the passage of Bill 51, An Act respecting the Restructuring of the County of Simcoe, the county was encouraged to plan and to prepare a county official plan. We are told that the county will be prescribed to prepare an official plan. The program to prepare it is under way. The province has supplemented our budget by many thousands of dollars in order to prepare the plan. The momentum is clearly there.

At the same time there are voices within the county who do not want to see county planning and would like to separate for planning purposes. The potential to do so by sections 14.1 to 14.9 may give incentive to try to separate, even though the minister would be unlikely to

approve the scheme. The attempt could create delay, confusion and generally cause problems for the province's own desire for the county.

Thank you. We'll be happy to entertain questions.

**The Chair:** Very well. We'll begin with the Liberal caucus. Mr Grandmaître.

**Mr Bernard Grandmaître (Ottawa East):** Do you believe that if Bill 163 is not amended to suit your needs, especially, first of all, to be prescribed, and also to give you the real power of planning in your own county, the objective of the government will not be met? In other words, the old system will still be in place and it won't be streamlined to the needs of county government. Do you agree with me or not?

**Mr Caldwell:** Well, I believe that we're dealing only with certain sections here of Bill 163. The concern is that we're in the process of doing a county official plan, and particularly the last item that I reviewed, which was pertaining to the municipal planning authorities, is probably our biggest concern in that we've tried to play the devil's advocate and imagine what might happen, for example, if one of the local municipalities in our county were to marry up with a local municipality in an adjacent county to perform what is set out in this section. They could not only thwart the county setting up its plan, or make it very difficult, but also do it for another county as well. That was our concern.

**Mr Grandmaître:** It makes it a complicated system. Also, in your closing remarks you say that the county will be prescribed. The ministry told you or the minister told you that you would be prescribed?

**Mr Caldwell:** Ian, would you like to respond to that?

**Mr Ian Bender:** Yes. Officials from the Ministry of Municipal Affairs gave us that indication that in all likelihood we would be prescribed.

**Mr Grandmaître:** In all likelihood? It's not assured?

**Mr Bender:** No, it's not assured.

**Mr Grandmaître:** Do you think this is fair when we're going through such a very important bill that you're not prescribed, you'll have to wait and see?

**Mr Bender:** I don't know whether it has us on pins and needles, but there is some uncertainty involved.

**Mr Grandmaître:** Do you think this is fair?

**Mr Bender:** No.

**Mr Allan K. McLean (Simcoe East):** Welcome to the committee this morning and presenting your brief here. I want to start off by asking you about the approval authority. The regions and Oxford county have been delegated that authority. You're asking for these other counties to be delegated the same authority. Is that after their official plan of the county has been approved by the minister? Is that what your concern is?

**Mr Bender:** That's correct. We've indicated clearly here that obviously certain conditions have to be met before you can safely delegate those approval authorities, but those conditions, once the regions have them in place, are automatic. Why not the county?

**Mr McLean:** As it is now it says the minister may delegate that authority, but there's nothing that says that,

once you have met certain criteria, you're going to be granted that authority, is there?

The other question I have is with regard to the planning, official plans. In your opinion, do you believe that a county official plan would be appropriate enough without planning at the lower level, or do you think both levels should plan, the lower tier and the county?

**Mr Caldwell:** I suppose if there weren't plans already in place at the local level, it might have been simpler to have one plan for the whole county. But I think that now that we have local plans, many of the local municipalities, for lack of better words, guard those local plans very jealously because they give them certain things they can do in their municipality that maybe a neighbouring one doesn't. There was certainly some resistance to the county taking over the official plan process because the concern was that they would all be shaped into the same mould.

**Mr McLean:** But the bottom line is that nothing can be improved unless the upper tier approves it anyway. So if you have an official plan for your municipality and it doesn't coincide with the county official plan, then what good is it, in essence, because the upper tier is going to take precedence anyway.

**Mr Caldwell:** You're correct. There may be some things that could be in our local plan that might vary slightly but not upset the county's position on its official plan.

0950

**Mr McLean:** You didn't touch anything at all with regard to conflict of interest. There are three sections to this act: the Planning Act, the Municipal Act and the conflict and disclosure act. You didn't touch on that disclosure act. Do you think it's appropriate that all members elected to municipal councils, school boards and so on, file a disclosure with the clerk?

**Mr Caldwell:** The planning committee did not take a position on any section other than the planning issues. I have my own personal feelings on the conflict-of-interest legislation, but I don't know if this is the time and place to bring that forward.

**Mr McLean:** You don't have to if you don't want to.

**Mr Caldwell:** One of the concerns I had with the conflict-of-interest legislation is that it does require revealing all this information and providing it to the clerk. That's fine. But all incumbents this election—I gather the legislation won't be in place—will have had to do so prior the next election. All new candidates don't appear to be required to do the same thing.

One of the concerns I have is that new candidates can get elected to public office without having provided this information. Now the argument can be made that's the case this time around, but I think if we're going to play on a level playing field, once this legislation is in place, all candidates should be required to do it as part of their submission when they file for public office.

**Mr McLean:** How much time have I got, Mr Chair? Just one minute? Getting pretty tight here.

The other day we were in London and Chatham, and the county of Lambton indicated—I believe it was the



county of Lambton—that they had an official plan and they were looking for approvals also. There was another county also. I see you have the county of Lambton named in here.

I was wondering if there were any other counties that you didn't name here that were in the process, as the county of Simcoe is, of proceeding with an official plan and looking for planning approval. Why are there only about eight or 10? That'll be the question somebody will want to know.

**Mr Bender:** That is because those are the counties that have official plans in place approved by the ministry. We feel it's a criterion, one of the conditions, of delegating the approval authorities that the upper tier have an official plan in place. So we've named those counties where an official plan is in place or, in the case of the county of Peterborough, where one is pending.

**Mr McLean:** These are the only ones that have the county official plans and you're putting one on. What hope have you got of ever having yours approved when these are not being approved?

**Mr Bender:** We did add to the list "or any other county that has an official plan," not knowing which ones will be next.

**Mr Paul Wessenger (Simcoe Centre):** Thank you for your presentation. I was quite interested in some of your submissions with respect to delegation of planning authority. One thing I would just like to ask with respect to this aspect of delegation, how would we ensure that the county has had in place what we call the planning expertise and planning experience to deal with matters of subdivision approval and official plan approvals of lower-tier municipalities?

I'm just asking. The mere aspect of having an official plan approved would not guarantee that the upper-tier municipality would have that planning infrastructure in place, and I'm wondering, shouldn't there be some sort of criteria to ensure that an upper-tier municipality does have that infrastructure in place?

**Mr Bender:** Our comments simply reflect inequality between the regions and the counties as far as the planning criteria are concerned. Yes, the ministry would want to ensure that either the county or the region has the staff and the expertise available to deal with those approvals, but none is stated in the act. It's assumed, I guess, that that's something that the administration would look after.

We're simply stating the same thing for the counties as is stated for the regions, because there's no statement in Bill 163 as to the region's requirements for planning expertise. So we haven't done the same non-statement for counties as is done for regions in the bill.

**Mr Wessenger:** You think there should be such criteria established then?

**Mr Bender:** I think it can be handled administratively.

**Mr Wessenger:** The other question just following up on that, just another question, it appears that counties vary greatly in their size and capacity throughout the province. Should it really be an obligation for a county to assume this responsibility? There may be some counties,

for instance, that would prefer to leave the responsibility at the provincial level. Should not that option be there?

**Mr Bender:** Yes, and we've stated that clearly in here, that where a county does not have an official plan, the minister is the approval authority.

**Mr Wessenger:** I think the county still might have an official plan but not wish to develop the planning infrastructure. An official plan could be developed, for instance—a planning consultant could prepare an official plan for a county and they would not have developed their infrastructure.

**Mr Bender:** Yes. It still has to be a decision of the minister, and the county council could communicate that wish to the minister.

**Mr Wessenger:** Right. Thank you very much.

**Ms Margaret H. Harrington (Niagara Falls):** Thank you, Mr Caldwell, for a very good brief. I like the positive tone. And it's nice to see Mr Bender again. He's from our area.

On your first page you talk about setting the tone of a provincial-municipal relationship, and I think that's a good way of looking at this. Certainly we want a less confrontational style than has been seen in the past with the usual planning meetings at city councils.

The one item that you bring up is the option of a municipal planning authority and you certainly question that option being available. I would like to ask our staff at the Ministry of Municipal Affairs to explain to you the rationale behind putting this option forward.

**Mr Philip McKinstry:** My name is Philip McKinstry and I'm with the Ministry of Municipal Affairs. We put forward the option of a municipal planning authority in the legislation for the specific purpose of allowing those areas, usually urbanizing areas that have some fairly significant differences planning-wise from the counties, to in fact do some planning on their own, where the counties probably weren't interested in planning.

In terms of your suggestions, one of your suggestions was that the planning authority not be able to pass a bylaw constituting itself without the approval of the minister, and that is in fact in the legislation. Just to go a little further, in terms of being prescribed to have an official plan, our commitment there is that we will consult with counties before we prescribe them to have an official plan, and I expect what we're hearing is that there has been some discussion with the county of Simcoe before.

I think the minister would take any representations from counties that were concerned about municipal planning authorities being set up quite seriously and would like to discuss with the county before they were set up. But I will be interested in hearing from the committee any suggestions for changes to that section.

**Mr Caldwell:** One of the thoughts we had with respect to that section was perhaps it was brought forward by staff because of areas where counties weren't planning on setting up an official plan, and there may be an urban area with one or two surrounding townships that wanted to set up. We don't see a problem with that. That provision is still in there the way we have suggested the

wording so that it doesn't inhibit it. What we were concerned about is if it was used to fracture the process, particularly while the county of Simcoe is in the process, and any other county that might be in the process. So what we're trying to do, as I suggested earlier, is play devil's advocate and let's see how this thing could go wrong and see if we can't catch it in the legislation rather than have it slip through the cracks.

**Ms Harrington:** I thank you for your concerns. We will look at those.

**The Chair:** Mr Eddy, do you have a comment?

**Mr Ron Eddy (Brant-Haldimand):** I just have three points of information.

**The Chair:** I'm sorry, we don't bank time in committee. Three points may be very long. Do you have a question or a point of clarification or anything like that?

**Mr Eddy:** Yes, I do. The first one is, joint planning boards were very common in Ontario and were dissolved by the Planning Act of 1983 simply because they didn't work. They were a mess and it took authority away from the municipal councils. The point here is, the minister may or may not hear deputations; probably would, but it's not certain. I think the authority to allow a municipality to opt out of county planning should be up to the upper tier and voted on by them.

The point of information I had was, the list isn't quite complete because the county of Middlesex does have an official plan. If you will remember, the deputation from the County Planning Directors of Ontario corrected that list the other day.

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The other point of information I just wanted to be confirmed by the ministry is simply that at the present time the Planning Act requires, I believe, that local official plans be in conformity with the upper-tier official plan, if there is one. Is that still required by the new act? I think that's an awfully important point.

If there is an upper-tier plan, it takes precedence and the lower-tier official plan must be in conformance with the upper-tier. I just want that confirmed. I think that's the case.

**The Chair:** Do you want to respond to this or to other comments?

**Mr McKinstry:** I think just that one.

**The Chair:** All right, please do.

**Mr McKinstry:** Thank you, Mr Chair. Yes, that is true. We did not in the bill change a section that said lower-tier plans must be in conformity with upper-tier plans.

**Mr McLean:** They do not have to be?

**Mr McKinstry:** They do have to be in conformity. It's not changed.

**The Chair:** Do you want to make some kind of comment with respect to all of this?

**Mr Caldwell:** I want to thank the committee for hearing our presentation. I think that the questions that came forward indicate the same concerns that we had, so thank you very much.

**The Chair:** We thank you for the time that you have taken to come before this committee and for your submission.

#### CONCERNED CITIZENS OF KING TOWNSHIP

**The Chair:** We invite Concerned Citizens of King Township, Ms Margaret Coburn, co-chair.

**Ms Margaret Coburn:** My name is Margaret Coburn and I am co-chairman of the Concerned Citizens of King Township, a volunteer citizen organization with representatives throughout the township. My companion today is Fay Stonehouse, who is a member of our organization and a leader of a local group fighting to preserve a wetland in one of our villages.

I'd just like to say that we've had a little difficulty reviewing this act. It's a very important act and it's not only the summertime, but we've been involved in a lot of new things coming out, such as our new regional official plan in York region, which is where I come from, King City village going through a community plan, the Oak Ridges moraine strategy. We've been responding to all of those, and as a citizen group we don't have quite the ability to do as much work as we'd like to. However, we feel this is important and we'd like to be here today.

I should point out that what I've given you is a summary. I'm sorry, I really wasn't able to get what I'm going to say totally, but certainly at a future time I can give it to you, if you'd like to have it. The summary that you have is roughly the outline of what I am going to talk about.

The Concerned Citizens was started over 25 years ago in response to some deeply felt concerns by residents that the rural characteristics of the township, which had drawn them to live in the township, were in jeopardy. King township now has a population of approximately 17,000 people living in three villages and seven hamlets, and there are 130 square miles of largely rural land. It is one of the nine municipalities that make up the region of York. It is surrounded on three sides by urbanized communities and is within commuting range of Metro Toronto. We are looking at the ability to allow a rural area that's surrounded by the urban area to do something rather than the other comments that were made about the urban areas being allowed to do things within a rural community.

We were pleased when the Sewell commission was appointed to study land use planning and development reform in Ontario. Mr Sewell was our guest speaker at our annual meeting in April 1992, and subsequently we made three submissions to that commission on October 14, 1992, February 16, 1993, and March 26, 1993. We also responded to the consultation paper of the Ministry of Municipal Affairs, A New Approach to Land Use Planning, on March 8, 1994.

We have been pleased with the opportunities given to us during the life of the commission and now by the government. Bill 163 is now before you and it's our opinion that this is an extremely important bill that will do much to determine how Ontario will develop in the future.

We applaud the government's proposal that planning decisions will be driven by clear policies rather than by



reactions to development proposals; and by "clear," we want them to be extremely clear and definite in the suggestions that are in them. This is from a citizen point of view. We find it very frustrating when words can be abused or flexed around. We were happy to hear that you are proposing to have these clear proposals and we've seen some of the policies that you have.

We are pleased with the declaration that planning authorities must be consistent with approved policies. We support the goal of sustainable economic development with all its implications as a significant step forward in planning concepts.

We are supportive of the notion that planning decision-making should be at the local level, and the delegation of responsibility for it to the regional council appears to be a positive move. But we have consistently throughout this exercise presented the view that decision-making should in some instances go even further to the local municipal level, or Ontario will proceed to become a province developing along homogenized lines with no opportunity for different kinds of communities.

The idea of diversity among communities may be difficult to have happen, and I'll explain why. The urban development will uniformly overtake communities inch by inch or yard by yard, whatever you like, regardless of the wishes of the community, in a relentless, unimaginative pattern.

We have a suggestion as to how this may be done, and it would have to of course be studied, but we feel that a community that has planning capacity on staff—they obviously have to be wealthy enough or organized enough to have that. There should be a certain population level, and number (c) has expressed electorally that it wishes to reserve its character as a rural community. It will be difficult to do so under the present regional system.

Using our municipality to demonstrate, we have one representative on our 18-member regional council. That member, our mayor, has no alternate. If she can't get to a meeting, nobody is there. Six of the nine municipalities are urban bound by choice. Two of the other three more rural municipalities seem to also be interested in developing a more urban lifestyle.

A rural community by nature remains limited in its population growth, which is obvious, so it is politically limited. The issue of moving boundaries to accommodate urban sprawl has not in the past taken into account the wishes of our rural community. We have had the boundaries moved over and we don't know how often that's going to happen and what control we have over that. As far as we know, this is going to be a decision of the region. We are disappointed as a community that this has not been addressed.

I want to comment on some other statements concerning the environmental impact, mitigating factors and monitoring. We question the validity of the environmental impact statement. Is it necessary really to add this additional level? We assume that it will be prepared by the proposer of the development and will not therefore be objective.

We are also concerned about the mitigating factors. Mitigating factors on paper before the fact appear to be convincing. The point is that we won't know until some years down the road whether or not they prove to be accurate. It seems to me that the idea of mitigating factors is getting a great deal of use along the way in places where really no should be no, and it would be helpful to us if in fact when they're based on planning principles, no remains no.

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Monitoring provisions are certainly welcome and we have urged this to happen. We feel that the monitoring is absolutely essential in the planning process. We have pointed that out in the past, but it seems a lot to expect that money and the expertise will be available to carry it out. We wonder whether the government is prepared to look into that and see that it can be carried out. It will be a huge job to do. It should be done, but can it be provided for?

The streamlining of the decision-making is certainly desirable. We share the developers' views and everybody's views on this, I think, that streamlining would help. As I said before, if no could mean no, it might save a bit of time as well. But I think the strong policies will help. Having very clear policies that must be followed will help.

There are two policies that I'd like to comment on, and one is the housing policy. We understand the desire to discourage urban sprawl and the proposal to intensify development. We have now encountered the affordable housing policy which requires the only village in our township with limited full services to absorb the affordable housing requirement for the whole township.

The effect is for the owners of development properties to design intense subdivisions which are totally inappropriate in a village and will alter the village character unnecessarily in order to accommodate a provincial policy which, if applied in an urban community, would have little or no impact. The impact in a village is quite different.

The agricultural policy: This bill continues to protect areas classes 1 to 3 soils and disregards the fact that active, viable beef and dairy cattle operations, apple orchards and berry farms are flourishing on lower-class agricultural lands. We have addressed this issue before but we have had no success so far. We would like to see the lower classes identified and protected.

In general, we have consistently expressed concern that terminology should be clear, definite and unequivocal, such that there's no room for doubt about what the government intends to occur. We have been specific about these concerns in our presentations in the past.

In conclusion, it seems to us important to point out that the objectives of developers are not the same as the objectives of the government. The government needs to make its intentions very clear in order to avoid unnecessary and costly conflicts over what may or may not occur in land use planning.

Those are my comments.

**Mr McLean:** Welcome to the committee this morning

and thank you for your brief. The clear policy statements of the government, do you believe that they're clear in these policy statements that we have now? Have you seen the new act or have you seen the policy statement that the ministry has put out?

**Ms Coburn:** I believe I have, if it's the same one that you have that came out with the bill.

**Mr McLean:** It's a comprehensive set of policy statements. You have no problem with those policy statements?

**Ms Coburn:** I can't be specific with you here on this but I guess we're just saying to you that we want the wording to be so that it is clear what is meant. I'm sorry, I can't answer that question specifically.

But if I can just make sure that whoever is making the final decision makes sure that those words are—the terminology such as “may do this,” of course, and “shall do this,” I know that's an old chestnut politically, but there are terminologies like that that we would like to see examined very carefully. In the words “should be discouraged,” we don't think the word “discouraged” does anything. Nobody needs to act on a word like “discouraged.” It's those kind of soft words that we are really concerned about.

**Mr McLean:** The housing policy with regard to villages, you indicated that you have some concern there. The village does not have water and sewers. What do you believe the housing policy should be? I know there's not allowing for subdivisions, but do you believe there should be room for infill or severances around that hamlet or village? What do you think should take place?

**Ms Coburn:** You mean in the village that I was speaking about?

**Mr McLean:** Yes.

**Ms Coburn:** The reason we're getting the affordable housing applied to us is because we have water and sewage. We had a health problem in Schomberg, as you may know, and it was put in, but it's a village of 900. No other village in the township—this is the point I'm trying to make—has full services. Therefore, in the municipality of King, with its requirement for affordable housing, the only place they can put affordable housing to represent the part for the whole township is in Schomberg. We just feel that the application, generally speaking, in a village of this plan is not practical and not workable.

**Mr McLean:** It calls for 30%.

**Ms Coburn:** We have got a senior citizens' residence, we have got group homes, we have got the ability—and if you insist that this affordable housing component be carried out there, the developers in many cases just want to conform and so they are going to propose plans that really and truly are not in the best interests of the village.

**Mr McLean:** I have some problem with regard to the farm policy, and it's the same all over Ontario. It seems one policy's got to cover all of Ontario, and there's a lot of rural Ontario that's a lot different than what King is.

**Ms Coburn:** Exactly.

**Mr McLean:** In this policy it says there's to be one severance for farm operation of a full-time farmer of

retirement age. I don't know whether that's very clear. It's not clear to me who's going to determine the retirement age of a farmer, but that's what's in this bill.

**Ms Coburn:** That's a good point.

**Mr McLean:** What do you think about the severances in King township? I presume you would not want any.

**Ms Coburn:** No. We've been after the local government for a long time to come out with a clear rural policy which would contain the severances, and there's a difference of opinion, of course, within the public. So far we haven't found the political will on the council to go ahead and bite the bullet and make the decisions, but certainly, unless they come out with a very clear restrictive policy on it, we will be like everybody else.

**Mr McLean:** Class 1 to 3 farm land, you indicated you'd like to see that maintained and that farmers are farming it. Would you define that separately in legislation or would you have a clear policy with regard to 1 and 3, and who's going to determine whether it's class 1 or 3 farm land?

**Ms Coburn:** Well, who's going to determine it, I assume that's determined by the Agriculture ministry as to the type of soil that's there.

**Mr McLean:** That would have to be, I guess, by the official plan of the municipality would have to try and determine what they would allow to take place on class 1 to 3. It should be identified as valuable.

The environmental impact statements, there has been a lot of discussion with regard to people getting minor variances and with regard to additions. Maybe I could ask you, there's going to be no appeal to the OMB with regard to minor variances. Do you agree with that?

**Ms Coburn:** My first comment is, what is a minor variance? We've had a lot of trouble with that, because I think in the description we got of what it was supposed to be, there were examples given, and I think I read in here too, there are some examples. For example, it may be this or that. But “for example” isn't enough, and we feel that issues do come before the committee of adjustment that we have that in our view are not minor variances. The impact of the decision is far bigger than just where it's sitting. I think it's very tempting for people to come before the committee of adjustment rather than take it up further if in fact they can get it to happen.

My first comment really on that is that I'd like to know—if a minor variance really is a really minor variance that doesn't have any impact on the rest of the township, I would say why waste the time of the OMB? But until such time as that's very, very clear, I have trouble with it.

**Mr McLean:** The first day of the hearings I asked the minister what a minor variance was and he didn't know what it was either, so we're all in the same boat now.

**Ms Coburn:** I'm in good company, is that it?

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**Mr Wessinger:** Thank you very much for your presentation. As I understand, you're satisfied with the concept of the policy statements determining the preservation of rural areas, but you want to ensure that those



policy statements are sufficiently strong.

**Ms Coburn:** Yes.

**Mr Wessenger:** Just going to the whole question of your comments on housing policy, you indicated you have some concerns about your municipality being a primary rural area having to adhere to the targets. I was wondering and I'd like to ask ministry staff or the parliamentary assistant to elaborate on that, I was under the apprehension that the targets were to be regionally based, in which case of course the whole area of York would have to fulfil the target and individual municipalities could fit different criteria than that. If I could ask the ministry to comment on that.

**Mr McKinstry:** In fact what the policy statement says is that 30% of the housing should be affordable, but in terms of distribution it will be up to the region through its regional official plan exercise to allocate the actual numbers to different municipalities. So it's in discussion between the local municipality and the region to where it exactly goes.

**Ms Coburn:** I guess my problem with this is that the Schomberg community plan has gone through, and it's being held up at present, as I understand, down at Queen's Park. The reason is because we haven't recognized enough density to accommodate the affordable housing policy. That's what I understand, and that's why I've taken this position. I'm not down there, so I don't know what the thinking is, but it's being held up, and we understand that's why it's being held up, because it hasn't got enough of the necessary requirements to meet the affordable housing policy.

**Mr McKinstry:** I'm not familiar with that exact official plan, so I can't comment on what its status is.

**The Chair:** Mr Wessenger, please continue.

**Mr Wessenger:** I just have one further question. Being a former lawyer, I share with you your concern over minor variances. It appears to me the whole scheme of the act of course, the question of minor variance, will be determined by the court. Would you prefer that that be reconsidered and to take a look to see whether the matter of whether it's a minor variance be considered by the OMB, the issue to be determined by them rather than by the courts. Would you prefer that?

**Ms Coburn:** I'm sorry?

**Mr Wessenger:** Would you prefer that the Ontario Municipal Board determine whether a decision was a minor variance or not rather than have the courts determine it?

**Ms Coburn:** I think that would be preferable.

**Mr Wessenger:** Have you any suggestions? It obviously would have to have some sort of screening process, because at the present time many appeals of minor variances are on the basis of it isn't a minor variance. I guess there would have to be some sort of scheme to try to—

**Ms Coburn:** Unless there are very clear rules or perhaps a screening process, as you say, to determine it. But as I understand it now, it's the committee itself that determines whether it's a minor variance.

**Mr Wessenger:** Yes, it is.

**Ms Coburn:** I find that's not working. I don't think that's satisfactory.

**Mr Wessenger:** No. I know major developments have been built on the basis of minor variance. I've seen that happen.

**The Chair:** Ms Harrington, not much time left.

**Ms Harrington:** With regard to your concern about the status of your official plan and why it has been delayed, our staff person is just making a phone call now. I hope they will be able to speak with you before you leave today.

**Ms Coburn:** Thank you.

**Mr Eddy:** I'd like to know too.

**Ms Harrington:** I wanted to ask you, there has been a fair amount of concern over the last week or so when we have had people come to us with regard to the change from "shall have regard to" to "shall be consistent with," with regard to the provincial policy statements. Are you in favour of this new wording?

**Ms Coburn:** Yes.

**Ms Harrington:** Good. I do believe that we have to have strong, clear policies as you have stated.

You also bring up a very interesting idea about the diversity and uniqueness of different towns and villages across Ontario, and we do have a very rich history. That is very important to the communities, plus to the whole of Ontario.

You were bringing up how do we make sure that this is continued. I would just throw one suggestion forward for the record, and that is the new accessibility of individuals such as yourselves and the encouragement of ordinary people to be involved in the planning process I hope will strengthen that uniqueness of communities. But I would certainly look to other avenues as well to try to strengthen that.

**Ms Coburn:** Thank you very much, we will, and I hope other people will.

**Mr Eddy:** Thank you very much for coming before the committee with your views and thoughts of your association, the Concerned Citizens of King Township. You've raised some very important points, and I look forward to seeing your full brief, to have the opportunity to study it. I think you pointed out very strongly the difference between urban and rural and that the rurals developed, which is the most case for planning, shouldn't be imposed on rural Ontario, and you're a case in point.

It almost seems to me that those rural municipalities that want, and I know there's another member here on the committee who's had the experience of wanting growth development, intensification, it's not being allowed and, on the other hand, perhaps because where your municipality is situated, it's almost being forced on you, and that's very irksome.

I happen to live in a rural municipality myself where just the other day there was approved by the OMB a very, very large subdivision in a completely rural area with no services of any kind whatsoever. Well, there are hydro lines, of course. We're electrified, so to speak. But

I know your concern and I sympathize with you.

I want to ask you a question. You mentioned your concern about wetlands and, of course, they are very important because so many wetlands have been eliminated by our urban municipalities; they no longer exist. But you mentioned a King City plan, I believe, a local plan for your local community, the municipal plan for the municipality, and now because York does not have a regional plan, an upper-tier plan, the region is proceeding with an upper-tier plan now.

I'd like your view as to whether you think having more than one plan is going to be better from your perspective for a rural municipality or not as good. They're costly, of course, to prepare, official plans, but the minister is requiring, I believe, upper-tier, that's in your case a regional land use official plan, which is very complicated; it takes precedence over the local. I'd like you just to comment on that if you would, is the first question. Do you see it strengthening your case, or do you think an upper-tier plan will—

**Ms Coburn:** The planning staff from the upper level, we believe that they are, you know, dealing with things objectively and recognizing, but with the political structure that there is there, unless either the regional municipality act is changed to have one representative for one municipality, which I think would be fine, or they have to recognize within this plan that under certain specified conditions a local plan is acceptable. I mean, that is the alternative idea to me.

I think in the regional context it would have a better chance if the divisions—we have five people. I think it's five from Markham and, you know, one from King, three from Richmond Hill. It's not the way the province does it, and I don't really understand why the region—it certainly doesn't help us because the votes are just not there in terms of making things happen.

With even the best intentions of the planners they have to present to a political body that's kind of biased in one direction. So either the regional municipality act should be changed or there should be a provision in it for a municipality to opt to go a different way from the other municipalities, which may indeed all want to be going in the same direction.

**Mr Eddy:** I think that's a good point because the trend on representation at the upper tier is not the way you're looking at it. In fact it's going the other way. In Ottawa-Carleton the mayors will no longer be—there will be no representative from the municipal council on the upper tier with the new act, and indeed municipalities may find themselves sharing a representative with some other municipality or part thereof.

I think the second part of what you're saying is much better. Where a rural municipality in an upper tier wishes to remain rural or mostly rural, it should have that option, and I guess the question is, how do you get the upper tier to recognize that and incorporate it in the plan if indeed they don't see it that way? Otherwise, you're almost voiceless and it'll be imposed on you.

The other question—

**The Chair:** Sorry. We ran out of time. We thank you

both for sharing some of your concerns and some of your ideas with this committee.

**Ms Coburn:** Thank you very much for listening to us.  
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VICTOR WILCOX

**The Chair:** We invite Mr Victor Wilcox. Welcome to this committee. Just as a reminder, if you want the members to ask you some questions, please leave plenty of time. Otherwise there won't be much time for anything other than your presentation, which will be just fine as well.

**Mr Victor Wilcox:** I understand that. I come here having checked with your office in Toronto before this thing got going, and I found out that indeed a lot of the presentations to this committee have been sort of critical. I'm here, I hope, to present some sort of constructive suggestions that will facilitate the efforts of this province to function correctly in planning.

Before I get started, I have a brief that I presume has been distributed now. But I certainly just wanted to comment on one of the thrusts of Bill 163, which is its determination to intensify. I've recently been re-reading a book that I had in my library many years ago by a guy named Desmond Morris, who points out that we have serious social consequences when we squeeze people into tight surroundings. The thrust of Bill 163, which is intensification, I think should be reviewed from the point of view that maybe, because of its social consequences, we shouldn't be forcing intensification in this planning process.

The brief I have is going to take me probably 10 minutes to go through. I'd like to introduce my comments, however, a little bit with some of my personal experiences. I have a consulting engineering practice, a small practice that not always but often is dealing with people who are in the development industry. Some of the experiences that have come to me I think are pertinent to the things that I'm going to say, so I'd like to share a couple of them with you.

I have a client, for instance, who is a new Canadian. He grew up in Greece and came to Canada and managed to get himself, through his own energy, well enough endowed that he bought a piece of land, had it rezoned from agricultural to residential, and that was within the official plan. He decided that a piece of it could better be developed as highway commercial, because in his community there was a need for that kind of development, where there wasn't so much of a need for residential development.

To get the rezoning to highway commercial, he now had to have the official plan changed. To get his official plan changed, he had to have a hydrogeological study done to support his application for the official plan change. When he did that, he ran into bureaucratic problems that I fought through with him for two years.

During the period in which this was all going on, we had a speech from our Premier of the province. This was in 1992 when the Premier said in one of his speeches that he would like to have the private sector share with him in the problems of getting this province going again. This



was at the height of our recession.

I said to the people who were obstructing the passage of my submission for hydrogeological assessment that we needed now to have some assistance from the public sector, but we didn't get that. The guy who wanted to do that has not done it. He got so ticked off by the inappropriate resistance we were getting to his proposal to do that small development that he has not invested in that sort of thing. This is part of the reason why this province is not getting investment from the private sector. It runs into too much interference from the public sector when it tries to get approvals.

Back to my brief: The real intent of my being here is to talk about the manner in which provincial civil servants are remunerated. I intend to draw a comparison between wage payment systems based on job descriptions as these systems function in the private sector and in the public sector.

In both sectors remuneration levels normally are based on the requirements of the job being performed in terms of the many factors such as education or training and the experience requirements of the job, the physical ability requirements, the human relations skills, the leadership qualities or the supervisory skills, and many others.

In the private sector, where the profit motive is strong, human resources are utilized like all other resources, to maximize profit on invested capital. Individuals as well as groups with good work output get performance bonuses but only individuals who have supervisory skills and can provide leadership get promoted into supervisory or management positions, and they remain there only if performance is better than that of the others who may be competing for those jobs.

Supervisory responsibility traditionally is recognized with a remuneration level that is higher than that for those being supervised. This is justified on the grounds that people with good leadership qualities are scarce and much in demand. Those who can lead contribute in various ways more to the profit of their enterprise than those who work but don't lead.

In the private sector workers who don't perform well are let go, supervisors who don't earn profit are demoted. These are the realities in the private sector where competition dictates that efficiency and profit are imperatives for the survival of the organization.

In the public sector neither competition nor the profit motive exists. Remuneration, however, does tend to be based on systems that were developed in the private sector and subsequently were adopted into the public sector because they seemed to work so well. In the public sector remuneration levels tend to be established by defining the jobs and then setting the remuneration to equal that for jobs of similar description in the private sector. In this process supervisory and management people almost automatically get remunerated at higher levels than those that they supervise.

All this seems quite logical on the surface, except that what is missing is that in the private sector performance is vital and therefore carefully monitored. Poor performance from either the workers or their supervisors leads to

loss of job opportunities, a reality that is entirely absent in the public sector. In the government offices a person can get fired if he steals something but he rarely gets fired if his work gets behind, and that's the difference between the public sector and the private sector, in my view.

In the public sector superior quality and quantity of work can't lead to profit-sharing or bonuses because there is no profit. Civil servants know that and know also that if they can get their job description rewritten to reflect a component of supervisory responsibility, their remuneration level will dramatically increase.

The most direct approach to causing that to happen is to get so far behind with their work that they can get themselves assigned a helper, and that brings with it the possibility of having their job description revised to reflect the fact that they are now supervising and that's the key to this whole thing. The supervisor who doesn't encourage this is cheating himself out of an opportunity to get his job description rewritten because then that would reflect the fact that he is now supervising a supervisor and that makes him a manager, and hence his remuneration should go up.

Within the civil service, at all levels of administrative responsibilities, the imperatives of self-interest dictate they must encourage low levels of performance throughout their organization and encourage proliferation of staff at every opportunity.

Gentlemen, the current grossness of our civil service is thus explained, I submit, and cries out for some kind of fundamental change. I propose that a logical change would be to develop a new pay system for employees in the public sector that recognizes the absence of profit as a performance motivator, a system developed uniquely for the public service that provides reward for superior quantity and quality of work. It's important that we start paying better for performance rather than for lack of performance, rather than rewarding a staff proliferation which we should be really worried about.

I suggest to you that the task of devising and implementing such a system must not be assigned to present public sector employees. They would be influenced by self-interest. The system would just be tinkered with because, for them, it is a good system. The task must be farmed out to private sector consultants who would be fully objective. Their terms of reference could, of course, cover how to alleviate the hardships when somebody has to get laid off, as I'm sure that would happen. The basic thrust, however, of this exercise must be to create a civil service of a size just sufficient to accomplish things necessary for good government.

I'd like to suggest that I have had the kind of experience that brings these facts to my notice. I have been in the private sector early on as a factory manager and this was at the time when job descriptions were beginning to be used as a tool for rationalizing remuneration levels in the industrial workplace. Industry at that time was rapidly expanding. The baby boom was on. Soldiers from war duty were re-entering the workforce, usually to command wages that were higher than those being paid to workers who hadn't gone to war.

There was a morale problem emanating from wage inequities that had to be resolved, and this was largely accomplished by industry's adoption of the tool of job descriptions. When we tried job descriptions as ways of rationalizing wages in our offices, it worked there too. It was tried in the public sector and it has created more problems, I submit, than it has ever resolved and for reasons that I have now explained.

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I should tell you that I have worked briefly in the public sector. I have, however, for many years managed a consulting practice which offers engineering expertise, often to the development industry, and have had experience with development projects, personal experience therefore of the frustrating delays and escalating costs that constantly accompany development proposals as these proposals pass through the hands of civil servants at each step of the approvals process. Civil servants clearly are acting out of self-interest based on their perceived imperative to make all of their work take as long as is necessary to be granted a helper.

The development industry is in crisis, which will not be alleviated in any real lasting way by the ending of our current recession. The stranglehold that regulatory zealots and our inappropriately motivated public servants has in the past created, and soon will again, create the shortages and high prices and low quality that is characteristic of products from our industry, from the development industry.

It is an easily demonstrable fact that quality of product varies inversely with its scarcity, and our planning controls are creating an arbitrary scarcity generally. The consequence is that consumers of development products are plagued in this province with high prices and marginal quality. This is serious when the product is housing, but it is disastrous when the product is industrial or commercial space.

Our manufacturing and service industries have leaders who are hardheaded businessmen and they are being forced by international competition to demand value when shopping for factory or office space. If they don't get it in Ontario, they will shop elsewhere, as they already are doing. The current and continuing outflow of capital and jobs is a matter that Ontario government decision-makers can and must address. Our development industry clearly must be allowed to be competitive in what is increasingly for it a world market.

We cannot do much about the zealots who demand more regulation of the industry unless, of course, those zealots are, as all too often they are, our own government employees. But what we can do is implement what has been suggested by me, which is a fundamental attack on the manner in which we derive our payments for our civil service workers.

Did I make it?

**The Chair:** Yes, you did, but unfortunately there's no time left for questions. Thank you for the presentation.

COUNTY OF BRUCE

**The Chair:** We invite Warden Milton McIvor and Mr Malcolm McIntosh.

**Mr Milton McIvor:** Thank you for the opportunity. As you said, my name is Milton McIvor, warden of Bruce. Accompanying me is Malcolm McIntosh, our planning director. We are here to discuss the planning aspects of Bill 163. I'm going to let our planning director proceed.

**Mr Malcolm McIntosh:** We have submitted a written brief to you. As you know, on Bill 163 we also did a comprehensive brief with a number of recommendations. I'm just going to read to you this morning the brief that we have submitted today. It synthesizes all the submissions we've made so far.

The county of Bruce has a long tradition of undertaking comprehensive long-term county planning for its member municipalities. This is generally reflective of the positive and forward-thinking attitude of the residents of Bruce county. In many respects Bruce county is considered one of the forefathers of county planning in Ontario.

The county of Bruce is vitally concerned that its many significant natural features and unique community characteristics are maintained and enhanced. One powerful tool available to Bruce county in ensuring these features and characteristics are maintained has been an effective county planning structure.

In consideration of Bill 163, the county of Bruce believes the effect of this legislation will be the ultimate demise of effective county planning in Bruce county. The result will be significant degradation of the natural environment, destruction of the unique community characteristics and loss of Bruce county way of life, which is so important to the residents of Bruce county.

The following outlines our major areas of concern, which are taken from the county of Bruce submission on Bill 163 dated August 1994.

First issue, the demise of effective county-wide planning: The requirement that municipal decisions on all new planning applications "shall be consistent with" the proposed provincial policy statement has the effect of eliminating meaningful local input into decision-making. The county of Bruce prefers the current reference of "shall have regard to," which indicates some flexibility in applying provincial policy statements to local decision-making.

The county of Bruce does support the concept of clearly articulated provincial policy statements in matters of provincial interest. It would seem absurd to propose that the province has an interest in all new planning applications as the proposed legislation implies. To do so would require considerably more unnecessary red tape and time delays.

As an alternative, provincial policy statements should only apply to clearly identified areas of provincial interest. Additionally, sections 14.1 and 14.3 of Bill 163 would enable two or more local municipalities in one or more counties to create municipal planning areas not subject to county official plan and also not subject to any county levy for planning services. The legislation does not even require that these local municipalities be abutting one another.



The county of Bruce does not believe that opting out of county-wide planning by local municipalities and the associated loss of county levy is in the best interests of county level of government or county-wide comprehensive planning. The opting-out provisions of Bill 163 will guarantee that county-wide planning will not survive and may spell the death of other county services.

Second, more provincial control over local planning: The proposed set of comprehensive provincial policy statements are so encompassing that there is little left for local councils to make decisions upon. The county of Bruce feels that the effect of imposing all of the proposed provincial policy statements will be to shut down development and economic opportunities in rural areas of Ontario.

The county of Bruce agrees with ensuring environmentally sustainable development. The county does not agree that environmental considerations should overwhelm other considerations when making decisions on development. There's a need for effective balancing of considerations to ensure proper development does occur in rural Ontario.

The county of Bruce believes that the most appropriate mechanism for making decisions on local planning matters is through the local municipal council with effective public input.

The extent of the proposed policy statements and the intended application of these to all new planning applications will also result in local residents having no meaningful input and participation in decisions on local planning. The county of Bruce believes the provincial government should encourage public participation and community planning by ensuring some flexibility to provincial policy statements for local needs.

Third, lessening of local council's ability to make independent decisions: The county of Bruce has a concern that the proposed legislative changes may affect the ability of local councils to make independent decisions. The county of Bruce also feels that meaningful public dialogue is a necessity for effective decision-making in community planning. However, a number of proposed changes will result in greater time delays in the review and approval process and also open up more issues which may become subject to appeal to the Ontario Municipal Board. At the same time, the legislation limits the right to appeal under questionable circumstances.

An example of this is the proposed legislative change in Bill 163 which would make decisions on subdivision approval subject to appeal to the Ontario Municipal Board. Currently the legislation allows the minister to consider referring a matter to the board. The ability to appeal will now exist even when the property is designated and zoned for the intended use and the principle of development has been established. There would seem to be little to be gained by this new appeal opportunity.

Another example relates to the approval of planning policy by approval authorities, including the provincial government. The legislation would enable the province not to refer an official plan amendment to the Ontario Municipal Board if this authority is not satisfied with the information in support of the amendment or if this

authority feels there is no apparent land use planning ground. In such cases the applicant has no right of appeal. There would seem to be a need to have an appeal mechanism when an approval authority refuses to even consider the policy amendment. It is not acceptable to leave these decisions to the provincial bureaucracy alone.

The county of Bruce encourages applicants to provide sufficient upfront information in support of proposed policy changes. Nevertheless, the county recognizes that persons should have the right of appeal when they do not agree with the decision of an approval authority, especially when considering matters dealing with the principle of development.

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Additionally, in reviewing the proposed changes to the Ontario Planning and Development Act, it is noted that this legislation would enable the ministry to prepare a plan with many of the environmental, economic, social and physical elements of an official plan for community planning purposes under the Planning Act.

This plan prepared by the minister and amendments thereto are appealable to the Ontario Municipal Board only if referred by the minister. In such cases, a board only makes recommendations to the minister but does not have binding decision-making powers. This same legislation affects all municipal public works, improvements and undertakings in that these must not conflict with the plan. Also, no municipality or planning board may pass a bylaw which conflicts with the minister's plan.

The county of Bruce can accept that the provincial government may need legislation to effectively implement provincial interests. In planning matters, this should occur through the Planning Act and not through separate, all-encompassing legislation.

Additionally, the legislation as proposed would apply to a great many municipal actions which are also subject to the Planning Act and may not be considered of provincial interest. The county of Bruce does not feel the provincial government should have this additional control over local decision-making.

Lastly, unequal treatment of counties versus regions: The county of Bruce is also concerned by the legislation's differential treatment of county-level government as opposed to that for regional governments. There is an apparent attempt to provide approval powers to regional governments which are not extended to county governments and at the same time to reduce the existing powers of county government on planning matters.

The county of Bruce is convinced that strong county-level government is a necessity for long-term comprehensive community planning purposes. The provincial government should be looking for ways to support county government by extending the same planning approval powers to counties and regions.

The proposed legislation would require that all prescribed counties prepare an official plan. The same requirement extends to regional governments. However, section 14 has the effect of dismantling county-level planning by the opting out by municipal planning authorities and having county official plans not apply to these

municipal planning authorities. Interestingly, section 14 does not apply to regions but only to municipalities within counties. The only apparent rationalization of this discrepancy is to implement restructuring of counties through the Planning Act. The provincial government should understand that imposed top-down restructuring does not work.

In summary, the county of Bruce does not support the proposed legislative changes to the planning system in Ontario as proposed under Bill 163. The county of Bruce was heartened by some of the recommendations proposed by the Commission on Planning and Development Reform in Ontario, the Sewell commission. The county of Bruce does not feel that Bill 163 is reflective of the positive recommendations of Sewell regarding streamlining, accountability and an open and fair process within the Planning Act.

**The Chair:** There are two minutes, more or less, per caucus. We'll begin with Ms Harrington.

**Ms Harrington:** Thank you for coming forward this morning and presenting, Mr McIntosh. I found, as you went through your brief, that it was negative. On page 4 it says that local residents have no meaningful input, and then on page 3 you say, "County-wide planning will not survive, and may spell the death of other county services." I find that rather morbid.

The purpose and effect of this legislation is to give more power to the lower-tier governments and open government to ensure that this power will be used effectively on behalf of the people. So we want accessibility of the public to planning matters and to have their input and also to streamline the process so the development may proceed without undue lengthening of time and therefore costing of money to the private sector.

I believe, and I think all parties would agree, that this reform of the Planning Act has been a necessity for quite some time, even decades, and that there certainly is a lot of positive approach to this in working with other levels of government. Now, there may be some hitches. We've certainly heard different points of view. But I would ask you to consider that this is a positive move forward for everyone in Ontario, including Grey county.

*Interjections.*

**Ms Harrington:** I'm sorry, Bruce county.

So we will certainly listen to the suggestions that you have put forward, but I would like you to try to put them in a positive light. If my colleagues have any questions—

**Mr Eddy:** Thank you very much. I appreciate your brief and pointing out the important matters that you do, because there are changes required if we're going to have fair and equal treatment. I think what you're asking for is to have the government treat all upper tiers equally and fairly.

I am particularly interested in the first page, "the ultimate demise of effective county planning in Bruce county," realizing that Bruce county has no separated municipalities and that you're surrounded by water on three sides almost, bordered by water, so maybe there isn't quite the need to extract municipalities from Bruce county and let them go with others. I originally thought

that maybe this was to facilitate planning between separated urban municipalities and adjoining rural townships maybe in other counties. I'm not sure, but I certainly see the point that you're making.

My view on it would be that a municipality could only withdraw from a county planning operation upon approval of the county council in the municipality in which that municipality is situated, to safeguard county planning, which seems to be an aim of the government, that strong planning at the upper tier.

One of the members just said they're going to have a stronger planning voice at the local level, but if you have a county official plan which takes precedence over and directs the local municipalities, even if a local municipal council wishes to plan differently, the upper-tier plan of course takes precedence; so if you have any comments on those matters.

There are some other things that I noted, and that was the Ontario Planning and Development Act, the importance of having the municipality be able to appeal and not rely just on the minister appealing it if that particular minister has a whim to do it, so to speak.

**Mr McIntosh:** I think principally when we look at section 14 it does allow the opting out, and it also allows the opting out plus you don't have to pay the county levy. What that has the effect of is, we're not operating on a lot of dollars in our county anyway, in terms of supporting the county planning system we have. As you know, most government operations feel underfunded and under pressure, and we're certainly that way. We're fairly critical. If we lose that, our ability to do county-wide planning is greatly affected, because we rely heavily upon having those municipalities in our system.

**The Chair:** Thank you.

**Mr Eddy:** Would you agree with my suggestion, then?

**The Chair:** Mr Eddy, I'm sorry, there are only two minutes per caucus. We're running out of time. Sorry. Mr McLean or Mr Murdoch.

**Mr McLean:** I'll just ask one quick question. It says, "No municipality or planning board may pass a bylaw which conflicts with the minister's plan." Well, there's not much point in the county planning. You might as well tell the minister to put the plan on: "What are your guidelines? What do you want? This is what we'll do if you'll accept it." There's something funny here.

The other one, Bruce doesn't feel the provincial government should have this additional power over local decision-making, it sounds like a dictatorship to me.

Bill, go ahead.

**Mr Bill Murdoch (Grey-Owen Sound):** Just one comment. I just want to thank the county of Bruce for coming here today. I appreciate that, and I know you'd have a good trip through Grey to get here. Just the one thing you mentioned is it looks like Municipal Affairs and the staff down there have been trying to restructure all the counties and I think maybe even get rid of them. Do you think this is just part of the back-door approach?

**Mr McIntosh:** There's always that concern. The legislation is there; it allows the opting out in terms of



county-wide planning. That's our basic, our biggest concern.

**The Chair:** We thank you for coming and for the brief. Mr Hayes wants to make some clarifying point.

**Mr Pat Hayes (Essex-Kent):** Just really quickly, Mr Chair: I understand that the Ministry of Municipal Affairs has seen, in Bruce county, the good planning that you have done and the process that you're in, trying to improve that, update it. I understand the Ministry of Municipal Affairs offered Bruce county the delegation for subdivisions. What is happening on that? Is discussion still going on, on that particular issue?

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**Mr McIntosh:** There are no discussions right now. That offer was made informally with staff. We said we would look at that. We were concerned, obviously, with the things that were happening with Sewell and Bill 163, so we sort of put that on the back burner right now.

*Interjection.*

**Mr Hayes:** We do consult a lot, Bill; this government does.

**Mr Murdoch:** But you don't listen; that's the problem.

**The Chair:** Thank you again for coming.

*Interjection.*

**The Chair:** Mr Murdoch, please.

RICHARD JONES PLANNING CONSULTANTS

**The Chair:** We invite Richard Jones Planning Consultants, Ms Angela Baldwin.

**Mr Eddy:** The honourable member for Grey-Owen Sound is being docile.

**The Chair:** Order, please. We were doing fine last week.

You have half an hour for your presentation. Leave as much time as you can for questions, please.

**Ms Angela Baldwin:** I apologize I don't have anything written to distribute to the committee. However, I understand the presentation is being taped, so you'll certainly have a permanent record of it.

My name is Angela Baldwin. I'm a planning consultant with the firm Richard Jones Planning Consultants in Barrie. We primarily represent private sector clients; however, we have a number of public sector municipalities which we do represent also. I'd like to make some comments and observations that would reflect, I think, the concerns of both sides.

First off, just some general observations: We certainly appreciate the fact that Bill 163 is intended to streamline and shorten the planning process. Obviously, it's been a concern to planners for a long time that the process is very lengthy, is confusing, there are conflicting policy objectives and it seems sometimes that certain public agencies don't get together to consult each other on what their own specific policy objectives are, so that you get a little bit of, it seems almost, in-fighting between the public sector agencies. So we're very, very supportive of the fact that it is intended to streamline. However, we do have some concerns relating to that.

Starting with the fact that the province seems to be strengthening its policy direction, as a result I believe that the ability of the local municipal authority to make decisions is being constrained by the province's new and increased power. Specifically, proposed subsection 51(14) of the new act suggests that public meetings for plans of subdivisions be held even though in our opinion the public already has ample opportunity to comment at both the official-plan-amendment and at the zoning-bylaw-amendment stage.

It's been our experience in the past that usually when a public meeting is held for an official plan amendment or a zoning bylaw, what you normally tend to present to the public is the plan of subdivision, if that is the specific application, and comments from the public generally are more related to the plan of subdivision than the official plan amendment or the zoning bylaw amendment, because the plan presents something for the public to review that they can actually see, whereas they may not understand the implications or the policies relating to an official plan amendment. So in my opinion, adding another meeting just lengthens a process that is already quite lengthy. I don't really believe you'd receive any new comments that you don't already get at an official-plan-amendment or a zoning-bylaw-amendment public meeting.

Certainly, there are some municipalities that hold separate meetings for official plan amendments and zoning bylaw amendments. If you add another one, the process could go on inevitably and you could get objections at each stage of the process, thereby just extending the planning process for years and years, almost indefinitely it seems sometimes.

Another point under streamlining is that under the current Planning Act applicants are allowed to request referrals of official plan amendments and zoning bylaw amendments to the board within 30 days of applying if the municipality has not dealt with the application. Bill 163 suggests that municipalities have 180 days, or six months, to review applications before the applicant is allowed to request a referral to the approval authority, and 90 days for a zoning bylaw amendment.

The request to the approval authority takes 15 days itself, and then finally the approval authority can take up to 150 additional days to make a decision before the applicant is actually allowed to appeal to the Ontario Municipal Board. So essentially, for an official plan amendment, for a process that now can take 30 days, under the new bill it could take actually one year. I don't believe that is really assisting in the streamlining, just relating to official plan amendments.

Further, Bill 163 allows public bodies to file objections to official plans and official plan amendments I believe fairly late in the decision-making process instead of at the public meetings. For example, with official plans they're allowed 150 days, official plan amendments 180 days and subdivisions 180 days to make an appeal.

It's been our experience that most approval authorities have an idea if they're going to object fairly early on. If it appears that the plan is truly contrary to one of their objectives, they seem to know earlier rather than later,

and what we'd actually be looking for is to see if there could be some change in wording that would encourage those agencies that do know they're going to appeal to let it be known earlier on in the process so that some consultation can be initiated, that you can have some round table discussions, because it really can expedite and it can really assist the process. If you allow them to wait until the very last day to appeal, six months has already elapsed, and then you get into the OMB hearing, which is another six months from there, and I think you've lost the opportunity to perhaps even resolve that objection earlier on.

We have concerns relating to plans of subdivision. Certainly, our firm is very much involved in the land use planning process, primarily residential, industrial and commercial subdivisions. A concern we do have is that new subsection 51(21) of the bill sets a lapse period of two years inside which conditions must be clear for plans of subdivision. So if you have an approved plan and you do not register within two years, your approval will lapse.

Now, my understanding was that this was removed from the 1986 Planning Act in 1993, but it's proposed to be reinstated again. Although generally we support the idea of making developers move ahead if they are sitting on draft plan approval or if they are sitting on capacity, two years is not really a long period of time, and I think what could happen is that if owners do lose their draft plan approval they'd be forced to reapply again to satisfy new and potentially even more stringent conditions and go through the lengthy approval process once again.

What we've found that does work in some municipalities is that they set a lapse period of three years, but they allow you to have three appeals, if you will, to extend the conditions, three extensions of up to three years in total. So you end up with about six years. Now you have to justify why you want an extension each time, and I do understand the act allows for extensions, but it doesn't specify how many the developer would be allowed. So maybe that is something for consideration. It has worked fairly well; specifically in the city of Barrie is where they have instigated that process.

Currently as well, on another point, this relates to a fairly major point in the bill, the Planning Act requires that the minister "shall have regard to" matters of provincial interest when carrying out his responsibilities. The proposed amendment to subsection 3(5) of the Planning Act requires that the Ministry of Municipal Affairs, the Ontario Municipal Board and councils and boards that are involved in planning decisions make decisions that are "consistent with" provincial policy statements.

My concern with the words "consistent with" is that they don't really provide a mechanism for local authorities to respond to local situations or even to realize that these mechanisms are indeed necessary. I think it would result in the discretion of local planning authorities being diminished. It also seems to imply that provincial policy will govern local decision-making rather than local issues.

While we all recognize that provincial policy statements are very important and that provincial matters should definitely be reviewed when making a decision, I don't think we can say at all that every municipality is

indeed similar and that they can't look at their own local situations to make planning decisions. I think that's something fairly important, and it may be my interpretation, but it seems that this is being removed from their decision-making, and it seems they're losing some of their autonomy rather than being given more control over the process, which was my understanding of the direction of the province.

I have some concerns relating specifically to the Ontario Municipal Board; one of them is its interpretation of the words "be consistent with." Certainly, I think it's taken the board quite a while to resolve the interpretation of "shall have regard to," which was the wording in the previous Planning Act, and I think it may be some time before the interpretation of "shall be consistent with" will really be resolved. I don't know whether the committee has gone through that discussion yet, but I think it is something to be considered because it's a long process. You never know what's going to happen at the board. It's always a bit of a crap shoot, let's say, and to come up with new terminology that they're going to have to interpret I believe is going to result in some serious delays, and misunderstanding perhaps for a while also.

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Other concerns I have relating to the board is that subsection 34(25) of the proposed new act will allow the Ontario Municipal Board to dismiss appeals "without holding a hearing" if, among other matters, "the bylaw or...amendment to the bylaw" is determined to be premature. However, the term "premature" is not defined.

What we'd like to know is who decides if the application is premature and on what grounds the prematurity is determined. Further, is there any recourse for an applicant to challenge the decision of the board if it determines that it is premature?

Further, proposed subsections 17(45) to (47) of the new act would allow the Minister of Municipal Affairs, up to 30 days prior to a hearing, to inform the OMB that the matter to be decided is of provincial interest. If that's the case, the Lieutenant Governor in Council is required to confirm whether the matter is of provincial interest prior to the board's decision being made final.

Our concern with this is that because areas of provincial interest are so broadly defined that it could almost mean anything, it seems that the province could intervene in any OMB hearing and override the board's decision. As the board is intended to be an independent and objective tribunal, I'm concerned that it would interfere with due process to the applicant.

There's certainly a lot of discussion in the new bill about prohibiting buildings or prohibiting any kind of construction on lands that are environmentally sensitive, let's say, and that involves significant wildlife habitat, wetlands, woodlots, ravines, valleys, areas of natural and scientific interest—ANSI lands—or significant corridors or shoreline areas of lakes, rivers, streams, or lands that are deemed to be a significant natural area or corridor. Under these terms, I think a significant amount of land is going to be frozen without compensation to land owners. I know that in the past certainly a lot of municipalities have been willing to take the land and preserve it them-



selves, but there are some that aren't willing to do that.

We've been involved in a number of situations where, let's say, a conservation authority wants the developer to preserve a ravine or lands below the top of bank. However, the municipality is not willing to take that land and the conservation authority doesn't want to take the land. So I think you may have a problem where nobody wants the land because of the maintenance responsibilities and the liability, and in the conservation authority's case it's often the taxes. So who's going to take the land? And if it's being taken from the developer, is there going to be any compensation at all in terms of either extra density in the development or monetary compensation? Certainly, we're not trying to support development on wetlands or anything like that, but I think it is something you should be concerned about, because we've run into this situation time and time again where nobody wants the land.

Another issue relating perhaps to compensation is section 41 of the site plan policies. It's required that the applicant provide "land...to the municipality for a public transit right of way." Again, that definition of "public transit right of way" is not provided and it doesn't appear that there be any compensation to the developer for providing this land. We'd like to know what is being implied by that wording, "public transit right of way." Is it a bicycle path or a pedestrian walkway or is it something much broader than that? I think additional clarification would be required to be able to determine the amount of land that might be affected by that wording.

With relation to parkland, we firmly support the changes being made to the parkland dedication requirements; specifically, a section under 41 which states that parkland dedication or cash in lieu can only be taken once unless density increases occur or the land use changes from commercial or industrial to residential. I know that some municipalities have been trying to what we call double-dip or take a parkland dedication twice, which is extremely unfair. I understand there's been a consultation committee made up of members of the Parks and Recreation Federation of Ontario, the facilitator's office and a number of other representatives of, I guess, parks and recreation interests who have supported the fact that you can only take a dedication at one time.

The question I have though is, I'm interested in the committee's interpretation of parkland dedication requirements under section 51 of the Planning Act, which relates to subdivisions. My understanding, and I've been given the same interpretation from a lawyer at Municipal Affairs, is that municipalities are only entitled to one of the two formulas, either the 5%-2% formula or the one-hectare-per-300-unit formula, not a combination of the two.

We've had a real concern that some municipalities are doing this. They're combining the two formulas and taking the higher of the two numbers. Again, if it can be at all resolved or at all clarified in the new bill, we certainly would appreciate that. Our understanding is that you take one or the other, that you don't take both. I don't know if that ever came up in discussion, but it's certainly an issue that we've run into time and time again.

If the bill is to be applied fairly to everybody, then I think everyone agrees that that's all developers or municipalities are ever looking for, but it appears that public bodies are being excluded from certain requirements, let's say. Sections 17 and 19 of the new act, relating to official plans and amendments, give approval authorities the right to refuse to forward a referral request on official plans or official plan amendments to the OMB if written or verbal submissions were not made at public meetings or before the plan was approved. So what this would do is preclude after-the-fact objectors by the public, but this does not apply to public bodies.

Why is there a discrepancy between members of the public and the public bodies on that issue? Shouldn't public bodies also be required to declare their interests at the public meeting or just before the public meeting? I think if that were changed it would be fair to everyone and it would require both the public bodies to get involved in the process a little earlier on, as I think you're requesting or requiring the public to. We would definitely support that.

Overall, anything that assists in clarifying the planning process and assists in streamlining is I think supported by most planners you'll certainly be involved with. Some of my points are questions, some are requests for maybe clarification of wording. I'm not trying to be negative. I'm trying to be objective and I certainly appreciate your understanding and your listening to our concerns.

**Mr Eddy:** Thank you very much for your presentation. We're pleased to have you comment on the act because of your experience in both the public and the private sectors. You make some very good points. You stress that streamlining and shortening the planning process is indeed good. This has been questioned, and I think you did go on to question it in some areas yourself, because although there are time frames established in many areas, there are other areas where there are no time frames, so that continues to be a concern.

Regarding the OMB and the infighting among boards etc and continuing that, I think you're being a little overpolite, personally, and realizing that the terminology "to be consistent with" is going to take a great deal of time to be interpreted by the board, and we've been told that. The ministry says those words give municipalities flexibility. Whether the OMB will agree with that is a very important question, and I think you pinned that one down. It's going to take a long time.

The OMB certainly doesn't agree with anyone on occasion. As we have seen, in spite of municipal official plan zoning, whatever you've got, the OMB will make its own decision at some time, and the tremendous delays are unconscionable. Even with a severance application for a retirement lot, to wait two and a half years for a hearing and then to have to wait, from the time of the hearing to rendering the decision, another nine months in one case here, is just terrible. The time for a hearing by the OMB is nailed down, but is the time of the decision nailed down, from your point of view?

**Ms Baldwin:** The decision relating to any type of application?

**Mr Eddy:** Yes. Once the hearing has been held, that's

one thing, but the rendering of the decision can be another time delay.

**Ms Baldwin:** Thank you for raising that point. Actually, that is something we do have serious concerns with. We had a board hearing that happened fairly recently, in March, fairly recently I guess by the board's standards, but that's still six months ago and we don't have a decision. It was a fairly lengthy hearing with a lot of complicated issues.

I don't know if this committee can make those recommendations, but we would really like to see the board make a decision within—give them an extra week or so after the hearing to make that decision. Don't let them carry on for six or nine months and then make a decision, where they've lost all the information potentially because, how can one person possibly remember information from six to nine months ago when they have had so many other board hearings in between? Thank you for bringing that to my attention.

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**Mr McLean:** Thank you for appearing this morning. You've brought some issues that a lot of people are not aware of with regard to this piece of legislation. You talk about "consistent with"—with what; "dismiss appeal if premature"—who determines that? That's an awfully good question. I'm sure the ministry is listening. The minister could intervene and disrupt OMB hearings. Can the minister intervene and stop the OMB hearing if he deems it premature?

**Ms Baldwin:** That appears to be the way it's worded.

**Mr McLean:** The other question I have is, do you think this process will speed up or slow down what we're already doing now?

**Ms Baldwin:** I really don't think it's going to speed it up, certainly in the short term, because there's going to be so much of a learning curve, let's say; in terms of the local government, the OMB becoming comfortable with the wording "shall be consistent with," I think that's going to be the biggest problem of all.

**Mr McLean:** Are you familiar with the comprehensive set of policy statements that the ministry has set out?

**Ms Baldwin:** Yes, I'm familiar with them. I couldn't read them verbatim for you but—

**Mr McLean:** No, but could I have your views with regard to the mineral aggregate, mineral and petroleum resources policies? Looking at that, do you believe that aggregate resources could be activated more quickly with this new policy statement or do you believe it would be more of a slower process? What's your opinion with regard to the aggregate section of this comprehensive set of policy statements?

**Ms Baldwin:** Do you mean the mining—the aggregate could be—

**Mr McLean:** That's right.

**Ms Baldwin:** Sorry, could you say that once again? Could the mining be initiated more quickly?

**Mr McLean:** That's what some people are going to be asking. Some people do want to know because it says in here, "Legally existing pits and quarries shall be

identified and protected from incompatible land use," so those operations are permitted activity. They can continue. But then it goes on, "In recognition of continuing local, regional and provincial need for mineral aggregate, as much of the mineral aggregate resources as is reasonably possible in the context of other planning agendas shall be identified and protected from land uses which are incompatible with possible future extraction." What's your definition of what I just read? Do you think it's going to be more difficult to have a pit approved, or easier?

**Ms Baldwin:** I cannot see it being easier for a pit to be approved. I think right now there are two things in planning that every resident hates to be beside: One is a landfill site and one is an aggregate site, it seems. Those raise the majority of concerns at every public meeting I've ever been to on those issues. I think the series of studies that aggregate producers have to do are very considerable and I can't see any way that the process would be shortened, for a pit operator, with the new policies.

**Mr McLean:** Since now the conservation authority is paying land tax, there are a lot of conservation authorities that would like to get rid of some of the land they've got. Who's going to take that land and what's going to happen with it? There are a lot of cases now where they can't maintain what they have got.

**Ms Baldwin:** Exactly one of the points I raised. It's a serious problem we run into time and time again, where they want us to protect the land but they don't want it because of the taxes they'd have to pay and the maintenance and liability. We ask that question, who's going to take it?

**Mr McLean:** Maybe the parliamentary assistant could give us the answer to that.

**Mr Hayes:** I was trying to get an answer to the one previous. Maybe you can repeat it.

**The Chair:** Do you want to repeat that question?

**Mr McLean:** Who's going to pay for the land? If the municipalities want to return their conservation authorities, who are they going to return them to: the municipality, or is the government going to take them over?

**Mr McKinstry:** I don't think that the government would plan to take over any lands from conservation authorities. I don't think it would be the government's view that there would be necessarily any intention to acquire lands.

**Mr McLean:** Governments tax them. Just put the tax on.

**Mr Grandmaître:** Will the assessment change?

**Mr Wessinger:** Thank you for your presentation. First of all, I'd like you to perhaps elaborate on your comments with respect to the separate approval for a plan of subdivision. Are you recommending basically that the approval process be combined, for instance, with the zoning approval, one meeting and one process?

**Ms Baldwin:** Yes. What I was saying was, presently when we go to public meetings on official plan amendments and plans of subdivision, many times, more often than not, they're relating to plans of subdivision. That is



what the public really wants to see. So when we come to a public meeting, even though it may be on an official plan amendment and zoning, what we present to the public is the plan of subdivision to show them how it's going to be zoned and how it's going to be designated. I think, to be fair to the public, they really want to look at the plan. They don't really get involved with the other issues. So what I'm saying is, I think we do that already without having to have the need for a separate public meeting.

**Mr Wessenger:** Could I just ask ministry staff whether it would be possible legally to have a joint meeting on the zoning and plan of subdivision?

**Mr McKinstry:** Yes, indeed, it would be. There could be a joint meeting on the official plan, the subdivision and the zoning, and as you said, the public is most interested in the subdivision, so it's a probably a good idea to have some kind of public forum on the subdivision.

**Mr Wessenger:** My second question relates to your comments with respect to the whole question of policy statements. You've probably lived in this area a fair length of time and you've probably made some observation on some of the development that's occurred in this area and in many parts of the province. I think it would be fair to say that a lot of inappropriate development has occurred in the past. Sometimes subdivisions have been developed on lands that may not be appropriate for them or properly engineered for them. We had problems of transportation; difficulties with overcommercialization; we've had competition for assessment; we've had municipalities go with all residential development and no balanced assessment on the industry. We certainly don't have a good planning history in the province.

I think it's also fair to say that many municipalities, I would suggest, have been somewhat biased in favour of development, whether that development was good or bad. Would you not agree that it's important that you have a provincial policy to ensure that development is appropriate and that municipalities stay within the policy guidelines?

**Ms Baldwin:** Certainly. As a planner I think I'd have to say we all want to ensure that development is appropriate or that it's "good planning." But my concern always is, who defines what good planning is and who defines what the public interest is?

Obviously, it's the province that's doing that, but I really do have to wonder if the province is best able to understand the local issues. A lot of times they are not able to get out to the local municipalities and find out about the issues or take a drive around and see what type of development is occurring and see whether it is truly good or bad. It's not the fault of the province. It's just that it doesn't have the resources to be able to do it. But I still wonder if they are best able to define public interest and good planning.

**The Chair:** Mr Wessenger, I'm sorry. We're running out of time and Mr Hayes has to make another comment.

**Mr Hayes:** On the issue about the minister intervening or interfering with the OMB, this legislation does not

give him that authority to do so. The only time the minister can declare a provincial interest, he'd have to do that before the hearing, just to make that clear.

**Ms Baldwin:** Right, 30 days prior to the hearing. But what I'm suggesting is that because the matter of provincial interest is so broad, it could really allow them to intervene in every single hearing. I'm just wondering how much discretion the minister is going to use, or are they going to take that policy—

**Mr Hayes:** I'm sorry to interrupt you, but actually that part hasn't changed from the act that's already there.

*Interjection.*

**Mr Hayes:** Well, no, it hasn't—well.

**The Chair:** Mr Hayes, anything further?

**Mr Hayes:** No, that's fine, thank you.

**The Chair:** Very well. Ms Baldwin, thank you for taking the time to come before this committee and thank you for your comments and ideas.

**Ms Baldwin:** Thank you very much.

**The Chair:** We invite the Ontario Association of Committees of Adjustment and Consent Authorities, Mr David Cowtan, who is the chair, but he's not here, I understand. Anyone here from that association? We'll check to see if somebody is somewhere outside this assembly.

**Mr Murdoch:** Somebody else then? Is anybody else here?

**The Chair:** There might be, but I'd rather wait a few minutes.

*The committee recessed from 1132 to 1137.*

#### COUNTY OF GREY

**The Chair:** If the association of committees of adjustment people are not here, is the county of Grey prepared to make a submission? Okay. We invite the county of Grey to make its submission.

**Dr Gerald Rogers:** Thank you very much, Mr Chairman, and good morning, everybody. As warden of the county of Grey, I wish to extend my thanks to the government of Ontario for providing us with the opportunity to address the committee on this extremely far-reaching piece of legislation, known as Bill 163. My name is Dr Gerald Rogers, and I appreciate the opportunity to express the opinions and concerns of Grey county, which will be both positive and negative.

Our presentation will consist of two parts. Mr Al Bye, chairman of the finance committee, will address matters of interest and concern dealing with that section of the bill relating to the Municipal Conflict of Interest Act and Municipal Act. Mr Howard Greig, past warden and member of the planning advisory committee of Grey, will address issues related to the Planning Act which we feel are important to Grey county. Once these presentations are completed, we will gladly entertain any questions raised by the committee members.

**Mr Al Bye:** On behalf of the county of Grey, I would like to respond to the proposals set out in part II of Bill 163, the Local Government Disclosure of Interest Act, as well as to respond to the amendments to the Municipal Act on the issues of open meetings and the disposal of

real property. This report is a synopsis of a detailed report approved by Grey county council and will be submitted along with this summary to the Legislative Assembly.

For the most part, the county of Grey supports the purported amendments concerning open meetings. We have had a procedural bylaw in place since 1856 and certainly advocate open council meetings. The county does not, however, support the need for committee meetings to be open to the public. Committee decisions are ratified by council, and in this regard the public is then given the opportunity to review committee happenings. In fact, in our municipality, committee minutes are submitted to council in their entirety for approval.

The county of Grey supports the enactment of section 193 regarding the disposal of surplus land. We are, however, concerned with the additional recording and advertising costs. We feel it is important that clarification be obtained on which land disposals will not require appraisals, for example, strips of excess road widening and so forth.

In terms of the Local Government Disclosure of Interest Act, the county of Grey is very concerned that the onerous requirements imposed by the legislation will discourage people from running for municipal office or volunteering for appointments to local boards and agencies.

The new wording of the clause prohibiting a member from influencing the vote appears to restrict and inhibit the personal rights of a member being represented by including the phrase "by or through another person." We strongly object to this amendment on this basis.

We are ardently opposed to the requirement to file financial disclosure statements. It is our opinion that the disclosure of interest by members is adequate. Subsection 14(3) of the Municipal Freedom of Information and Protection of Privacy Act notes that the disclosure of personal information describing "an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness" is an "unjustifiable invasion of personal privacy." We question why members of council and local boards do not receive the same consideration which is extended to other citizens of the province of Ontario by this act.

We agree with the act's position on the appropriateness of members receiving gifts. As indicated previously, however, we do not support the disclosure of this information through financial disclosure statements.

We also question why when the legislation was drafted all candidates seeking municipal office were not required to file disclosure statements. We also note that while members of the Legislative Assembly must file disclosure statements, these statements are filed in Queen's Park, not in local riding offices. Disclosure statements of municipal politicians should be filed and made available to the public in the same manner as the statements of their provincial counterparts.

In addition to our objection to the filing of financial disclosure statements, we are concerned that this provision increases the administrative workload in municipal-

ities. The county of Grey opposes the appointment of a commissioner as an unnecessary added quasi-judicial level of bureaucracy. We disagree that it is necessary to obligate penalties under the act. It is our preference to allow a judge discretion when meting out a penalty.

We agree in general with the provisions concerning how applications are made under the act. We would, however, suggest that the time frame for applications be limited to one year rather than two years, as proposed by the legislation.

We disagree that the penalties for insider information be channelled through the Provincial Offences Act. While we do not endorse the appointment of a commissioner, we feel that if a commissioner is appointed, it would be more logical to enforce this provision through him or her.

While we recognize the need for regulations, we hope the Lieutenant Governor would recognize the term of office of municipal councils when making revisions.

We appreciate the good intentions behind the drafting of the Local Government Disclosure of Interest Act and the provisions concerning open meetings in the Municipal Act. It must be recognized that the vast majority of municipal politicians are honest, dedicated individuals who give of themselves for the betterment of their communities, not financial gain. Extensive disclosure requirements will only serve to deter many qualified individuals from coming forward as candidates for election. We disagree with the overregulation being imposed by the legislation. In our opinion, the prevailing legislation can adequately address any problems.

We sincerely hope that the legislative committee takes into consideration the concerns of the county of Grey and other municipalities and that acceptable amendments will be made to the bill.

**Mr Howard Greig:** Mr Chairman, I also thank you for the opportunity to speak to the committee this morning, to yourself and the committee members. On behalf of the county of Grey, I am here to relay our concerns over certain provisions of part III of Bill 163, which if left unchallenged and unchanged, would have a significant negative impact on county planning and development in the province of Ontario.

It is our belief that the existing planning system has broken down because of the degree of provincial involvement required to permit, license or approve virtually all municipal actions. The county would question whether the province possesses the staff or the financial resources to continue this level of unnecessary involvement. If the provincial goal of streamlining the planning process is to be realized, responsible planning and decision-making from an economic and efficiency perspective must be at the municipal level, where the public has the greatest opportunity to participate.

Grey county responded to the Sewell commission and to the minister on the final report of the Sewell commission. The county expressed the view that the recommendations did not add to local decision-making, which was stated to be one of the goals of the commission. A copy of Grey county's submission is attached to this report.

We are concerned that part III of Bill 163 and the



overall reform package diminishes the ability of local people to make important decisions about their own communities. As examples, we would suggest:

—The provincial policy statements go too far in setting local policy.

—Changing the current requirements to “have regard for” provincial policy to “be consistent with” prevents communities from tailoring provincial policy to suit local conditions.

—The failure to empower counties in the same manner as regions makes it appear that the province does not believe the counties are capable of carrying out the same responsibilities as the regions.

Our first issue, provincial policy statements: With respect to the set of comprehensive provincial policy statements which have also been released and are to become effective upon the proclamation of Bill 163, we have concerns with the form in which they have been released. Neither the Planning Act nor the comprehensive set of policy statements acknowledges an understanding of the appropriate role of the provincial policies in guiding land use decision-making at the local level. The rigidity of the form and content of the policy statements in our opinion will allow little or no ability to tailor the policies to local circumstances.

Furthermore, there is no provision in the bill which would suggest that the policy statements must be reviewed at any given time. Therefore, it is left to the discretion of the minister to determine if a policy statement or portions of a policy statement are inappropriate or need to be reconsidered. At the very least, the bill should require a complete review of the policy statements no later than five years after proclamation, similar to the review requirements for an official plan.

Our second issue: Subsection 6(2) of Bill 163 repeals subsection 3(5) of the Planning Act and replaces it with a new subsection which changes the enabling clause for the policy statements from “shall have regard to” to “shall be consistent with.” This matter was argued throughout the Sewell commission’s exercise and we are disappointed to see that Bill 163 has included “shall be consistent with.” In our opinion, “shall be consistent with” will leave municipalities with no opportunity to interpret provincial policy to the local circumstance and in fact will require nothing more than straight regurgitation of the provincial policies into local planning documents.

The bill and the policy statements must be revised to only require that councils “have regard for” provincial policy. We do not see that the current wording needs to be changed. The reasonable implementation of provincial policy should be determined by the Ontario Municipal Board in times of conflict. Bill 163 will prevent the OMB from being reasonable. The board will have to implement provincial policy regardless of whether it makes sense in a local area or is accepted by the local people.

Issue 3: Section 8 of Bill 163 adds sections 14.1 to 14.8 to the Planning Act to enable municipalities in one or more counties, with the approval of the minister, to establish a municipal planning authority for joint planning

to address common issues on managing growth and providing services. The bill states that the municipal planning authority shall prepare and adopt an official plan, which would have the same status as a county official plan. A new subsection 14.3(5) would exempt a local municipality that is part of a municipal planning authority from paying the county levy for land use planning purposes.

This approach is totally unacceptable, not only because it could wreak havoc in a number of counties, but it would set a precedent for provincial government intervention into the essential power of a county council to set the levy to cover expenses of the county. This is a huge intrusion into the integrity of county government decision-making. This is a direct attack on a county’s ability to provide standardized service levels.

Providing the legal mechanism to let municipalities opt out of paying for county planning could be followed by similar mechanisms being introduced to opt out of other county programs, such as roads programs and county homes. It is interesting to note that municipal planning authorities could only be considered for municipalities within counties and separated cities. They are prohibited from forming in regional municipalities.

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Issue 4, imbalance of power between counties and regions: Bill 163 has created an imbalance between counties and regions in relation to the official plan approvals for local municipalities. While regions are given approval authority for local official plans and subdivision approvals, counties “may” be given approval authorities if delegated by the minister. If counties fail to plan or if they do not receive delegated approvals, they will face financial penalties for having the province remain as the approval authority.

For those counties with approved official plans, they should be given the authority to approve local official plans under subsections 17(2) and (3) of the Planning Act. Similarly, subsection 51(1) of the Planning Act should be replaced to include provisions for counties with approved official plans to be the approval authority for subdivisions. These authorities should also be extended to the other counties in the province as they prepare and receive approval for their official plans.

Issue 5, streamlining: The province has stressed the importance of making the planning process more timely and efficient and, as such, through Bill 163, has put forward a number of time frames under the guise of streamlining the planning process. These time frames, in our opinion, will in fact lengthen associated planning processes. For example, in dealing with official plan amendments, subsection 17(16) specifies that after the required 30 days’ notification and the holding of a public meeting has occurred, council would now be required to wait an additional 30 days before making its formal decision.

Depending upon the timing of council meetings, this could add four to six weeks on to the amendment process. The additional time between a public meeting and council adoption may be appropriate in the case of major amendments, but to delay the process for minor, straight-

forward amendments would not seem appropriate. Once the time frames are established in the Planning Act, there will be no flexibility in their application and therefore further consideration of a number of the time frames should be undertaken.

After reviewing part III of Bill 163, one cannot help feeling that county government is being unjustly penalized. This is evident by the lack of support for maintaining the county planning structure and the authority of the county to set its own levies and finances as they relate to planning services. Additionally, counties are not gaining any additional power or authority through Bill 163 and in fact could be losing by the new provisions. It is believed that Bill 163 treats counties in an unacceptable fashion and that development in rural Ontario, by virtue of the comprehensive provincial policy statements and their implementation guidelines will be severely curtailed. What the government will accomplish by Bill 163 is the establishment of a top-down planning system for Ontario.

AMO has also prepared a detailed response, entitled *Municipal Empowerment in Land Use Planning?*—and that's with a large question mark—AMO's response to Bill 163. Grey county would like to go on record as supporting that submission and its recommendations.

Grey county is committed to strong community-based planning and has had an established county planning system since the early 1970s. The county has had numerous official plan documents to provide policy direction and is currently undertaking the development of a new county official plan. The county wishes to continue with a meaningful planning program for its constituent municipalities, but this will be threatened if Bill 163 proceeds in its present form.

Grey county agrees that planning reform is necessary in the province, but not in the form of part III of Bill 163. We do not agree that the proposed reforms will actually result in municipal control and increased decision-making authority at the local level, or lead to a more timely planning and approvals process.

We would respectfully request that the standing committee recognize our very serious objection to the legislation in its present form and delay passage of Bill 163 until acceptable amendments are put forward to address the concerns of the counties and AMO.

**The Chair:** There are about 12 minutes remaining. Mr Hayes has some remarks and then we will circulate the time among the committee members.

**Mr Hayes:** Just very briefly, I'd like to clarify a few issues, especially at the top of page 3 when you're talking about the *Municipal Freedom of Information and Protection of Privacy Act*, all of the things you're talking about in here about the individual's finances, the income, assets and liabilities. This is something that we have to do provincially, but this act does not require municipal politicians to do that. I just wanted to make that clear.

There's another area here, down in your fourth paragraph: "The county of Grey opposes the appointment of a commissioner as...unnecessary," and "We disagree that it is necessary to obligate penalties under the act." Of course you're saying that it should go to a judge and the

judge should use their discretion. But if you have acts or laws, don't you feel that there has to be some way of enforcing that and sometimes you have to do it with penalties? That's one question.

**Mr Bye:** We don't oppose the penalties as such. I don't have the page here particularly, but we thought that the judge should have discretion in the penalties he issues. If I recall correctly, there are four distinct penalties and the first one was "shall" impose—and I'm doing this by memory. Yes, the first part is "shall suspend the member without pay and benefits for a period of not more than 90 days." The next three are "may" clauses which leave some option for the person who is imposing the penalty.

We think that "shall" in the first clause is not fair and that these penalties should be left to the judgment of a judge, rather than be mandated as they are, particularly that clause (a).

**Mr Hayes:** Can we get further clarification from the staff on that?

**Mr Paul Jones:** My name is Paul Jones. I'm manager of local government policy with the Ministry of Municipal Affairs. I'd like to agree with your statement to the extent that the legislation as proposed gives discretion to a judge. If a member is found guilty of contravening the act, the judge shall suspend the member. He has discretion to suspend the member from one to 90 days.

**Mr Grandmaitre:** Not the commissioner?

**Mr Jones:** No, a judge; not the commissioner. The commission is established to determine whether or not public moneys should be used to finance a prosecution. That's the role of the commission.

The other provisions are that he may also suspend a member from serving for up to seven years, he may declare the seat vacant, he may require restitution. So the penalty provisions are written exactly as you would suggest, that the judge be given discretion, a wide range of discretion, where a member is found guilty.

**Mr Bye:** Okay, thank you.

**The Chair:** We're going to rotate here so that the members have an opportunity to ask questions. Mr Murdoch, three minutes, please.

**Mr Murdoch:** I just want to thank Grey county for bringing such a prepared brief. I hope that the committee and the government will listen to it and make some amendments and act on it. They have some very good information in there. When the member, Mr Hayes, mentioned that they do consult, well, I hope you'll listen to this now and maybe do something about it.

Al has a few questions.

**Mr McLean:** Thank you. Mr Hayes hasn't told us whether the municipalities or the province is going to pay for the commissioner yet either.

You say a local municipality that is part of the municipal planning authority should be exempt from paying the county levy. Do you have a feeling that perhaps they're looking for more county government and county planning and the little municipalities are going to be done away with? When you say here that the local municipality



would be exempt from paying, somebody's got to pay.

**Mr Greig:** No, it's an opportunity to dismantle local government as we see it presently, because you start to take your county system of government apart when you start letting individual municipalities—they can be from a separated city, they can be from adjoining counties—form their own planning authority. At that time then, you've started to dismantle. If they ask for their levy for planning purposes back, you've started to dismantle local government as we know it.

**Mr McLean:** So Bill 163 is a step in the direction of county governments, in your opinion.

**Mr Greig:** Well, it's a step in the direction of a restructured county government, sure. It's an opportunity to open the door for that. There are counties where that's fine and there are counties where it's completely unnecessary. The county government is operating quite adequately at present.

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**Mr McLean:** Every place we've been, most of the wardens of municipalities that made presentations have been hoping that they would get approval to make decisions after they have their official plans approved by the minister. There is none of them yet, other than the regions and the county of Oxford, I guess, that has that approval. Why do you think there's been a holdup with this very process that's important for the local people to have their say?

**Mr Greig:** Absolutely. It's discrimination against the counties. What's behind it? I have no idea what has caused that, because the county planning system that has been in place in many cases was in place before there was regional government and has been very adequate. They have professional planners on staff, they have very adequate planning departments, and yet here they're saying that the system there isn't adequate.

**Mr McLean:** You never touched on—and Grey is a large agricultural municipality—the residential severances that they're allowing. The policy is one lot for a farm operation for a full-time farmer of retirement age who is retiring from active farming. It doesn't say who's going to determine what that retirement age is. What is your policy now in Grey county with regard to severances?

**Mr Greig:** In regard to severances, it's the same process I believe is followed in other counties where it's circulated, all adjoining property owners are notified, all the agencies are notified and then there's a planning approval committee.

**Mr McLean:** Is it one per 100 acres?

**Mr Greig:** In the Grey county official plan? Yes, you're allowed a retirement lot as a farmer.

**The Chair:** Mr Winninger, and if there is time for another, we'll go to Ms Harrington.

**Mr David Winninger (London South):** Just to come back to your earlier point about financial disclosure, do I understand your position correctly? You're opposed to municipal politicians making financial disclosure in the manner suggested by the act. But if there is to be financial disclosure, you would prefer that the statements be filed in Toronto rather than locally, and that there be no

commissioner because that would be excess bureaucracy. Is that correct?

**Mr Bye:** That's most of the import of what I was trying to put across to you.

**Mr Winninger:** It seemed to me that your main argument against financial disclosure would be that it would deter people from seeking municipal office. Is that correct?

**Mr Bye:** That's a major part of it. The extra workload and so forth on the municipality if the records were to be kept there is also a problem. But the main one is that people would be discouraged.

**Mr Winninger:** And you understand we're talking about pretty basic information here, such as whether you have a house, whether you have a mortgage, whether you have a business interest, not all of the detailed information that many people would seek to keep private.

**Mr Bye:** Yes, I understand that. I suppose we should go down to the last point I made though, which was that we do not see that this is necessary at all.

**Mr Winninger:** I agree with you that the vast majority of municipal politicians are fine, upstanding, altruistic and committed to the public. But there are, unfortunately, some cases across the province where people have been in a conflict-of-interest situation, haven't disclosed it, and it was only discovered through an investigation and subsequent charges.

Do you agree that there has to be some vehicle by which to ensure that politicians can withstand the closest possible public scrutiny and that there has to be some regime in place that will allow them to make disclosure in advance so that people won't conclude that they're making decisions based on their own financial and economic self-interest?

**Mr Bye:** I guess, going back to the first point, we still believe that probably the upfront policy that people are honest, and dealing with it that way, is the best. If in your wisdom you see that there has to be a change, there must be a change, we do not think the place for the information that you're asking for is at the municipal offices.

**Mr Winninger:** Shouldn't it be accessible to the people who have the most interest locally in the status of their politicians?

**Mr Bye:** It should be accessible, but it shouldn't be so accessible that it becomes common knowledge.

**Mr Winninger:** I believe one of my colleagues has a question.

**The Chair:** I'm sorry, there's no more time. Mr Eddy.

**Mr Eddy:** I regret that we're dealing with so many different subjects in this bill that we don't have the opportunity to deal with each of them specifically.

Thank you for your brief. It's excellent. You raise some very good points that I'd like to talk about, but there really isn't time. I wanted to get your reasoning about committee meetings, not to have the need for them to be open, but there isn't time. And I notice the comments about disposal of property you've made.

But I guess a couple of specifics: One is, I agree with your suggestion that if you're going to be required to do this, provincial members should be required to have our disclosure statements available locally in the office where, as the point was made, the people who are interested can get it the most easily. Let's be fair. So I agree with that, but we'll look at the other thing.

I also agree with your statement on the provincial policy statements that a requirement should be there that they be reviewed within five years, the same as an official plan, because they can be way off base, and things change. So the ministry should be required to review them, and I'd like to see that happen.

I did want to ask, do you have two-tier planning in Grey county? Do you have a county official plan or do you have a county official plan for the locals?

**Mr Greig:** Yes, there is some two-tiered planning in Grey county.

**Mr Eddy:** So you have some local municipalities that have their own official plans and then you have a county official plan.

**Mr Greig:** That's correct.

**Mr Eddy:** And the locals must agree with that as well. Well, this looks like two-tier planning being required.

Thank you for your views and especially the one on allowing municipalities to opt out of county planning. I think the only way that should be allowed is if the county council concerned agrees with it; otherwise, it can't happen.

**Mr Grandmaître:** Can I have one very short question?

**The Chair:** It doesn't seem like it.

**Mr Grandmaître:** Very, very short.

**Mr McLean:** Go ahead.

**Mr Grandmaître:** Have you approached the Ministry of Municipal Affairs to become a prescribed county?

**Mr Greig:** No, we have not.

**Mr Grandmaître:** You have not. How come?

**The Chair:** Thank you, Mr Grandmaître.

**Mr Grandmaître:** Well, let me follow up.

**The Chair:** Quickly, please.

**Mr Greig:** Well, at this time we are presently working on a new official plan.

**Mr Grandmaître:** Oh, I see.

**Mr Greig:** Once that new official plan is in place, or as we go through that process, it would seem an appropriate time to become prescribed. This bill won't allow that, unfortunately. You have to have the minister's approval.

**The Chair:** Okay, thank you very much. We are running out of time. Mr Hayes, one last comment.

**Mr Hayes:** Very quickly, Mr Chair. I don't want people going out of here with the wrong information. I have made this statement; I made it very clear at other meetings, but some members keep bringing it up: The municipalities will not be paying for the commissioner. It'll be coming out of provincial resources.

**Mr McLean:** We finally got the answer.

**Mr Hayes:** You had that answer last week, Mr McLean.

**The Chair:** Thank you, Mr Hayes.

We thank you very much for participating in these hearings and thank you for the brief you made to us.

This committee will recess until 1:30.

*The committee recessed from 1208 to 1336.*

**The Chair:** Call the meeting to order. Before we welcome the township of Erin, Mr Hayes has an announcement to make. Would you like to do that?

**Mr Hayes:** Thank you, Mr Chair. There are some proposed government motions, and I know the members are anxious to get some of these. These are the government's preliminary proposals. Some of these we have intended on bringing forward, and of course there'll be more to follow this because of these hearings and some other ideas and suggestions that presenters have made. I'd just like to ask the clerk, if the clerk hasn't already distributed these amendments.

**The Chair:** Rather than encouraging a debate at this moment, this was simply an announcement of amendments. Thank you, Mr Hayes.

#### TOWNSHIP OF ERIN

**The Chair:** We'll begin then with Mr Clarke and Mr Holder with this presentation, from Erin.

**Mr Murray Clarke:** Thank you very much. We appreciate the opportunity to appear before the committee to present Erin township's views with the reform package. This brief was adopted by council resolution on August 2 of this year.

Bill 163 and the associated reform proposals follow the final report of the Sewell commission, and, following the Sewell commission, the consultation paper issued in December 1993, A New Approach to Land Use Planning.

Erin township has monitored the progress of the reform effort with interest, has submitted responses to the province at each of the important steps. These are council's views on the reform package:

Firstly, with respect to disclosure of interest, it would appear that the reform initiative is largely a response to large urban and perhaps regional councils where the role of the politician is full-time. However, of the over 800 municipalities in Ontario, most elected officials are essentially volunteers, receiving minimal remuneration, with little or no exposure to opportunities for improper benefits from local decisions.

Council's view is that the existing legislation is appropriate and effective in dealing with potential conflict. Our experience is that local politicians are scrupulous in declaring conflicts and in not participating in matters where an interest is identified.

There is validity in the assertion that full disclosure of assets and particularly liabilities may in fact deter potential candidates from seeking office. This would be unfortunate since in most municipalities the field of candidates is typically very small.

With regard to the Municipal Act reform, the proposed revisions which would deal with open meetings, pro-



cedural bylaws, disposal of municipal property and permitting greater control over dumping and removal of fill and grading are appropriate and reasonable, and in fact within the last month, Erin township council has finally adopted a procedural bylaw using the draft legislation as a guide.

Most of council's concern is directed to the Planning Act reform initiative. Council is seriously concerned with many of the provisions of the reform package. The township has endorsed the position paper adopted by the county of Wellington which has been submitted to the minister and I understand was presented to the committee last week in London.

The opportunity for local municipalities to join together in planning areas or planning authorities is a throwback to the planning boards of the pre-1983 legislation. In addition to potentially weakening the role of the county planning function, planning areas or boards have in the past tended to be fractious, parochial and inefficient.

The bill requires local planning decisions to "be consistent with" provincial policy rather than the current "have regard to." The distinction, not dissimilar to the difference between "making a sincere effort" and "toeing the line" is not insignificant. When considered together with the suggestion that the province will now mandate prescribed contents of official plans, it becomes another major erosion of local council's discretion in community planning matters.

In the bill, counties have taken a back seat in terms of delegated approval authority for local official plans and subdivisions. This treatment of counties, along with the new authority for creation of planning boards, might be regarded as a back-door strategy to force local municipalities within counties to consider restructuring. Erin township has never resisted the notion of municipal restructuring and has long advocated a strong, unambiguous provincial policy in this regard. Before the bill is passed, counties must be given greater opportunity to acquire delegated approval authority. If approval authority in the county system is to remain with the province, streamlining the process will remain a mythical concept.

Included in the bill is a new provision which would allow the province, that is, provincial bureaucrats, to overturn local planning decisions with no opportunity to refer to the municipal board. One wonders how this fits with the province's assertion that the reform package will empower municipalities.

The bill also fundamentally alters the minor variance process, one aspect of the current planning regime which works. The changes, which would take away the opportunity to appeal variance decisions to the Ontario Municipal Board, are undemocratic and arbitrary. The revisions would place local elected members in a position where they must review decisions of their own committees of adjustment or in fact function as the committee of adjustment.

In the July 1994 issue of *Municipal World* magazine, Michael Vaughan describes the new minor variance provisions as "a direct attack on the rights of property owners." He questions the removal of the OMB appeal

avenue and suggests that, rather than streamlining the process, the new measures could actually slow it down. He notes that it is inappropriate to place elected members in a position where they must conduct minor variance reviews.

Our view is that the minor variance system as it exists works well, and so why attempt to fix it?

This municipality is not alone in its conclusion that the combined effect of the package of proposed policy statements will be to essentially halt development in rural Ontario. Michael Vaughan notes in his *Municipal World* article that the "policy statements are dramatic if not drastic in impact," that the "policy statements are elevated from guidance to strict governance" and that "the significant policy-making role of planning, whereby the structure and character of communities are determined, moves from the grass roots to the ivory tower."

Concerning the streamlining measures proposed in the bill, Michael Vaughan observes that many of the time lines for processing planning matters are unreasonable and impractical. He comments, "Some consider these provisions to sacrifice the rights of the public on the altar of expediency."

Comments and conclusions: It is increasingly apparent that local elected and appointed officials are regarded by the province as being incapable of dealing with land use matters in a rational and responsible manner; that these decisions are best placed with non-elected provincial officials who tend to regard all of Ontario as being homogeneous. Elected community representatives are questioning their relevance and purpose in an environment of constantly diminishing local discretion.

The province is employing doublespeak when it talks of promoting the concepts of empowering municipalities and streamlining the planning process. The real effect of this reform package is to tighten provincial control over the land use planning process and to direct rather than guide municipal decision-making in these matters. Community planning at the community level will become a myth and local councils will be left with making decisions on dog licensing and road ditching.

Overall, the message from the province is that the municipal role in local governance, particularly lower-tier municipalities, should be limited and very closely defined. The effect of this reform package is to further erode local autonomy and reinforce the top-down, centralist trend which defines the provincial-municipal relationship in Ontario.

What is needed is a recognition that locally elected and appointed officials are in fact best positioned to take decisions on local matters, within a provincial policy framework which recognizes the diversity of Ontario municipalities without compromising important protection priorities.

We need a planning regime which would allow us to respond in a meaningful and positive manner to the inevitable strong demands for growth in Erin township, positioned in the shadow of the greater Toronto area.

We need provincial financial assistance to ensure that adequate infrastructure is in place to service new develop-

ment. We need the tools to allow us to balance the demand for growth with sensitive and responsible recognition and protection of the natural, social and cultural resources in our community.

We also need a system which does not assume that development is a dirty word, one that recognizes that sustainable development is achievable, and in fact desirable.

We need to get past this incredible morass of an approvals system if we are to restore and ensure the long-term health of the development sector in Ontario.

This reform package will do none of these things. If it is passed in its present form it will guarantee only one thing: In a very short time, we will once again be dealing with proposals to reform the planning process in Ontario.

**The Chair:** Thank you. We'll begin with the official opposition, M. Grandmaître, five minutes.

**Mr Grandmaître:** On page 2, "This treatment of counties, along with the new authority for creation of planning boards, might be regarded as a back-door strategy to force local municipalities within counties to consider restructuring." What makes you say this? I'm not saying you're wrong, but I would like to get your definition. Why would you make such a statement?

**Mr Clarke:** First of all, I'm not suggesting that restructuring is a negative thing. As I outlined in the paper, our municipality, which is a quasi-rural municipality, surrounds another village also called Erin. We have many significant service linkages between the two municipalities, to the point where the dovetailing is pervasive. Logically, I think, as our council has done, an amalgamation would make sense.

If we revert to the creation of planning boards, planning areas, such as was the case pre-1983 in south Wellington, that's just yet another linkage of service. In our view, land use planning is the most critical function that municipalities perform. If those linkages are strengthened through planning boards, then the sense of community will be broadened and I think it will be a step towards local government restructuring in the county system.

**Mr Grandmaître:** Do you feel this kind of pressure?

**Mr Clarke:** I think if planning boards are created—and of course the corollary to that is the county planning function would be weakened. Unlike perhaps other deputations you've had, we tend to be very supportive of the county, at least in Wellington. Yes, I think it will lead to more pressure for restructuring.

**Mr Grandmaître:** One question on the OMB: In my 20 some years in politics, people have always been concerned about the OMB. Very, very seldom, people would have something good to say about the OMB. For the last 10 days, everybody is saying, "Hey, we need the OMB." Never mind the bureaucracy; now everybody seems to be on side of the OMB, "They weren't so bad after all." What are your thoughts about the OMB? Do you think it's not needed with this legislation?

**Mr Clarke:** I think the OMB's role is critical. In fact, it's pivotal in the planning process. As you yourselves, as elected people, sit in the House taking essentially policy

decisions creating legislation, we have a system in the parliamentary world where you've created an independent, arbitrary opportunity for litigation and for appeal, and that's the court system. You yourselves and local politicians are reluctant to serve in a tribunal or administrative tribunal capacity. You've created a system to ensure that those reviews are undertaken outside of the legislative function.

Local politicians are no different. They feel that their role is, of course, to create policy and to create legislation at the local level and to sit in that capacity. To sit also in a tribunal or a judicial capacity is, in our view, clearly inappropriate. I think it flies in the face of the separation of functions in a parliamentary system.

**Mr Grandmaître:** So you would like to see the OMB, with all its bureaucracy, stay in place.

**Mr Clarke:** Yes. The only comment I would make directed to the board is that our experience, other than the significant time line between the time an appeal is submitted—

**Mr Grandmaître:** And the cost.

**Mr Clarke:** And the cost, but it's essential and it's a necessary function. I'm aware that the board is undertaking, I think, great pains to streamline its own process and facilitate solutions outside of a formal board hearing, but it's critical, in our view, to have those decisions taken completely separately from the creation of policy.

1350

**The Chair:** Mr Grandmaître, you ran out of time. Mr McLean.

**Mr McLean:** Welcome to the county of Simcoe and thank you for your brief. You quote Michael Vaughan with regard to the new minor variance provisions as a direct attack on the rights of property owners. In your municipality now, do you have a committee of adjustment that makes those decisions?

**Mr Clarke:** Yes, sir.

**Mr McLean:** Do you have many that go to the OMB, appeals?

**Mr Clarke:** Relatively few.

*Interjection.*

**Mr McLean:** That's right.

**Mr Clarke:** However, the matters that go to the board are decided as matters de novo. The board clearly takes a fresh look at appeals that come before it, and not in every case but I would say in the majority of cases the decision of the local committee of adjustment is reinforced by the board's decision, but not always, and that's of course part of the process.

**Mr McLean:** Michael Vaughan goes on and he also talks about processing planning matters are unreasonable and impractical. What's your opinion with regard to the matters that we have seen here in this bill? Do you think they're unreasonable, the time limits of 30 days, 150 days, 180 days?

**Mr Clarke:** I can speak as a clerk, because of course I'm responsible under the Planning Act and many other pieces of legislation to see that time lines are adhered to. I'm sceptical that under the current regime the provincial



bureaucracy could cope with time lines which appear to be artificial. I'm from Missouri; I'd have to be convinced.

For example, an amendment under the Planning Act a few years ago required provincial agencies to respond to our circulations of planning amendments or planning initiatives within 20 days. Well, that just simply doesn't happen, and it's not appropriate to assume that if we don't hear from an agency within 20 days of circulation that they don't have an interest. In many cases they do have an interest but we're not hearing from them. I think it would require an incredible amount of power and force to overcome the inertia to see that those time lines are adhered to. I'm not rejecting them. I think it would be a great thing to see those streamlining measures effected. I just don't believe they're realistic.

**Mr McLean:** You say streamlining the planning process, "The real effect of this reform package is to tighten provincial control over the land use planning process and to direct rather than guide municipal decision-making in these matters." So what you're saying and you feel is there's going to be more control on the municipalities than what there is now.

**Mr Clarke:** Oh yes, sir, very much.

**Mr McLean:** What do you think will happen if you get the power to make the approvals, as a county, for plans of subdivision and for other jurisdictions? Do you think, then, that you will have less power than what you have now?

**Mr Clarke:** No. I think, in our circumstance, if the county of Wellington is given the opportunity, the authority to approve plans of subdivision and official plan amendments, I don't know that we would go so far as to suggest approval of official plans. That quite probably is the legitimate role of the province of Ontario, but at least then we would have our representatives sitting around this table. If it was the county of Wellington chamber, we have access within 20 minutes of driving rather than 777 Bay Street. We'd know whom we were talking with. We'd be dealing with planning and elected people who'd be familiar with our community. We don't see the county achieving delegated authority as any kind of a spectre. We see that as strengthening the local role as well.

**Mr McLean:** Thank you. My last question is to the parliamentary assistant. The parliamentary assistant would be aware that last week and so far this week we've had a lot of very negative comments with regard to this bill. Is it your intention that this bill will receive third reading this year?

**Mr Hayes:** Yes. Thank you, Mr McLean. Just to add, if you don't mind, to your comments, we've had quite a bit of favourable response to this bill also. Yes, we feel, hopefully, that it will get third reading probably in December, I think.

**Ms Harrington:** Thank you very much for coming forward. The township of Erin—is that in the county of Simcoe? It's not, is it?

**Mr Clarke:** No, Wellington county.

**Ms Harrington:** Wellington, okay. So you're over towards Orangeville?

**Mr Clarke:** Just below Orangeville.

**Ms Harrington:** I note your concern about the planning board and I'd like to talk to staff further about your concern about weakening the role of the county on that. I also note your concern about the deadlines. I really do think those deadlines should be and could be moved up. What you're saying is that you think they're too strict, they're too limiting for you, too short.

**Mr Clarke:** Under the current operating system, if an agency can't respond to us with even preliminary comments, or just simply with a comment that suggests they'd have to review a matter further—we're not getting that kind of feedback within a statutory 20-day time line now. To look at a full review and approvals system functioning within those time lines, I think it's artificial.

**Ms Harrington:** I note in the Niagara area, where I am from, my city planners have told me they have no problem meeting deadlines, that they have streamlined so this is not going to be a problem at all for them.

**Mr Clarke:** Perhaps I could qualify that. We're advocating very strongly that the county—and every county is different, of course—that provided the county has an official plan in effect and demonstrated a strong planning resource, then counties should have delegated approval authority. In that circumstance, I think those time lines are quite achievable.

**Ms Harrington:** Okay, that clarifies it. Finally, just to comment on your concern with regard to whether or not this will in fact empower municipalities, it certainly is the intent that the power go to the municipalities. This is a more rational way of doing it so everything doesn't have to go to 777 Bay, as you say. But along with that comes the importance of assuring that the local citizens have access to the planning process and are involved in it right from the beginning, that it is less adversarial, that people are listened to and involved.

We've heard in other parts of the province that in fact sometimes citizens aren't even heard until they take it to the OMB, because their municipal council says this is the way they want to go and that's it. I think it is important that municipalities are empowered so it doesn't have to be rerouted down to Bay Street, but that citizens are really involved in this process. I hope that happens.

**Mr Clarke:** I can't take argument with that. Certainly, our view is that community planning is a community process and I'll say it again: We regard land use planning as the most critical function that municipalities perform. Some would argue that perhaps roads are more important.

Our experience—we have what we still call a new official plan in Erin township that was adopted by council in December 1992. Over a two-year period we had a series of 12 public workshops, three formal public meetings, which were well attended and well focused. The plan that was ultimately adopted by council, in council's view was the best expression of the community's interests and desires for a 25-year time line, covering a whole host of issues that official plans typically cover. We're now just wading through 89 modifications proposed by various provincial agencies that would clearly distort the local interest that reflects what was certainly not consensus, but the best amalgam of the local viewpoint that came out of that consultation process.

One wonders how meaningful public consultation really is, when we're looking at a document this thick that would completely and radically alter that official plan which came out of a consultation process.

**The Chair:** Mr Hayes has some remarks.

**Mr Hayes:** In regard to your disclosure of interests comments, that it's a response to the large urban and perhaps regional councils, I don't know if you're aware of this, but 40% of the conflict-of-interest cases are from municipalities with 5,000 or less.

The other thing is where you mentioned that there's no exposure to opportunities for improper benefits from local decisions. I think in some cases it's possible that in the smaller municipality there could be a greater potential sometimes with development pressures and sometimes some very large developments, for example. That's one of the reasons we don't feel we should have different rules as far as conflict of interest is concerned, whether it be Toronto, Ottawa or Erin township. The other part about the candidates: They may deter potential candidates from seeking office. There are other jurisdictions that do have disclosures. Disclosure is required and there's really no evidence that I'm aware of or that the ministry's aware of where it has really been the case that it's discouraged people from running for municipal council.

1400

**Mr Clarke:** Our deputy reeve is here. He'd like to speak to that, of course.

**Mr John Holder:** I'll speak to this as well. At the time this was drafted for your presentation, a lot of members were unaware as to really what is expected as a response to this question. Now when it comes out when they're not going to have to disclose dollar amounts, I think it makes a very big difference and I don't think there will be the opposition to it that there was before.

**Mr Hayes:** The other point, Mr Chair, real quick, as far as municipalities coming in the back door to force restructuring is concerned—if a county wants to be restructured they have to request that through the Minister of Municipal Affairs—that's certainly not the intent of anything in this bill.

**Mr Grandmaître:** One very short question to the parliamentary assistant: You say that 40% of the charges or cases were from rural municipalities?

**Mr Hayes:** No, I didn't say that, Mr Grandmaître. What I said was that 40% of the cases were from municipalities with 5,000 or less population, so it's not just for the larger urban areas.

**Mr Grandmaître:** Of that 40%, how many people were found guilty?

**Mr Hayes:** What's the figure on that? I forget.

**Mr Jones:** There were two court cases all told.

**Mr Grandmaître:** Two court cases?

**Mr Hayes:** How many? There were charges.

**Mr Jones:** The Ministry of Municipal Affairs has documented 43 cases of conflict of interest that have proceeded to the courts, only two of which have resulted in guilty charges. Forty per cent of those cases involve municipalities of less than 5,000.

**The Chair:** We thank you, Mr Clarke and Mr Holder, for coming and for the presentation you made to us this afternoon.

#### ONTARIO ASSOCIATION OF COMMITTEES OF ADJUSTMENT AND CONSENT AUTHORITIES

**The Chair:** We call upon now the Ontario Association of Committees of Adjustment and Consent Authorities, Mr David Cowtan. We're going back to the previous appointment. They were to have come here at 11:30. There was a problem, so we've rescheduled them to the 2 o'clock opening that we have, given that we had the county of Grey at 11:30. Welcome, Mr Cowtan.

**Mr David Cowtan:** The problem was me. I got a misdirection and I'm here, better late than never. I think earlier in the summer each provincial member of Parliament was sent a copy of that through the mail. I'm going to just use it today. It's a summary.

Our association is 600-plus members. We represent the people who grant minor variances and give land severances. Needless to say, when ministry staff told us of Bill 163 in June and its passage on May 18 at our conference in Kingston, there was just total unbelief, particularly with respect that there would be no opportunity for individuals to launch an appeal to the Ontario Municipal Board.

I've heard your previous speakers and if I remember correctly, and I refer back to this newsletter, the Sewell commission mandate from this government was to restore integrity to the planning process, make the planning process more timely and efficient and ensure that the planning process focused more closely on protecting the natural environment.

We question whether or not removal of the opportunity to have an appeal heard by an independent body such as the Ontario Municipal Board will restore the integrity to the planning process, and whether it will be timely or efficient. What we believe is that people wanting to preserve their right of appeal will now be going to the councils for rezoning for one- and two-inch variances in their side yard. They will now apply for a rezoning and I don't see that will be timely and efficient or a wise use of the local council's time.

If you have a member of the committee, which many do, as an elected official in the province of Ontario, you have no right of appeal or review by the council. The only time that council may review a committee decision is if there are no elected officials on that committee.

Section 45—and I'm on item 2—I did a summary: We always were required to put it out in 10 days. We've been all making that 10-day deadline to get decisions out. Timely and efficient has now been extended by five more days. We don't know why they arbitrarily tacked on an additional five days when we were all making it in the 10 days that currently exists.

Minor variance applications get a review. You have the 15-day period and then the 30-day period. We used to have a 30-day appeal period from when it was heard; by the 15- and 30-day appeals, it's now extended 15 more days for an appeal. We don't see that's timely or efficient.



I refer to item 4, sworn declaration. I have been advised by the ministry that's permissive and not mandatory because sometimes it's very, very difficult in municipalities to find someone to take a sworn declaration. It is particularly in our municipality because it's the stated position of the province, in so far as municipalities are concerned, to limit the number of commissioners for oaths and affidavits. It appeared to be a requirement when I read the act, but I've been told by ministry staff that it's permissive. You can give a sworn declaration if you wish; you don't have to. When you read the legislation it appears as though it's a required sworn declaration that all the things of the act have been complied with.

We think the ability for council to review a matter and then refer it back to the committee introduces a looping system, it becomes circular. We can't see that's timely and efficient. The act allows council to tell the committee to reconsider the matter that they previously made a decision on. We fail to see how that could be timely and efficient, it just introduces a looping system.

Item 6: I see the province being protective of their fellow politicians. They say, in the instance of the council, that the Statutory Powers Procedure Act does not apply when council is reviewing a decision of a committee of adjustment. We find that if they don't have to follow the Statutory Powers Procedure Act, such as you find the rules, that will not definitely, in the opinion of many, restore integrity to the planning process when they don't have to follow the rules that other tribunals that make decisions on property matters must follow.

I refer to number—I think probably we can skip because some of them are repetitive between the committee of adjustment and the consent.

1410

One of the other matters that is our concern now is that the committee of adjustment is required to hear an application within 30 days. However, the land division committee or the consent authority must give 30 days notice. So what we see in an authority—the committee of adjustment that has both powers, they're to be hearing one in 30 days and giving 30 days notice in the other, so logistically it will not work. You will have to cause a deferral of the committee of adjustment application so that it can be brought on stream at the same time as the severance application. We don't see that as timely and efficient.

I think one of the problems we see as the biggest problem, of course, is this removal of the right of appeal. I had the opportunity to sit on the Sewell commission chair's committee and between the interim report, which was done in December of, I believe, 1992 and the final report in June of the following year, he said in the interim report, and I'd like to read it here: "The commission considered and rejected the idea of limiting rights of appeal. Not only is it inappropriate for the OMB to become less accessible, but conditions and limits would also very likely lead to further delay." That's from the Sewell commission and now you've taken away people's right to launch an appeal on minor variances. I find that it's somewhat unusual.

I did have an opportunity and I do have it in writing

and I did speak to Diana Macri, chief operating officer and secretary to the OMB. They spend less than 6% of their time adjudicating minor variance appeals. They do not advocate the removal of the minor variance appeal going to the OMB. I think there's a short one on the top of page 3 on that. They did write it and I think that speaks for itself.

I think the biggest problem, and I say it one more time, is the removal of appeal. I've heard it from some of the people who were here. I think this is the greatest travesty of 163 and our members are quite upset and we do have—we're just starting to get them in—the resolutions of the councils throughout the province that are opposed and support the position in our newsletter. We also have a questionnaire on Bill 163 that was going in September and I realize we're running it, but we have had the summer months which put us all at a bit of a disadvantage, but we are putting a questionnaire out on Bill 163 to all the municipalities in the province of Ontario.

I think, other than what you find in the written form before you, that's all I have at this point.

**The Chair:** We'll begin with Mr McLean, five minutes.

**Mr McLean:** Minor variances: On the first day of the hearings, I asked the minister if he could explain to me what the minor variance procedure was and he couldn't. Now we're wanting the OMB to stay in place to deal with these very difficult decisions and where we note there's only 6% across the province. I also note in this pamphlet where the OMB did not make any recommendations, but the OMB itself is not advocating the removal of minor variance appeals from its jurisdiction.

Your opinion is that the OMB should stay there and still be the watchdog.

**Mr Cowtan:** Absolutely.

**Mr McLean:** The other question I have is with regard to the integrity that you talked about at the start to try and restore integrity in the whole process.

John Sewell at the convention not long ago wasn't overly enthused about the process that we're in; he thought they were going to have 90 days to review what he had done and have some report. Instead of that, the ministry brought in a bill, 163, and John wasn't overly enthused about it at the AMO convention a week ago.

What do you feel are the major changes with regard to the approvals being made by the counties? And you talk in here about the two-tier also, whereby they would have some power. Would you clarify that?

**Mr Cowtan:** We didn't address that. Personally I have no difficulty, but our association did not address that particular issue. We stayed very focused on the minor variance and the consent process because those are the people we represent throughout the province. Albeit we have 600 members, we probably represent about 4,000 people when you take into account all the committee members and the elected officials who are appointed to committees.

**Mr McLean:** You're sending out a bunch of petitions and what not. The parliamentary assistant's already

indicated that we're going to have this finalized by this fall. Do you think you're wasting your time by sending out those forms?

**Mr Cowtan:** Well, we changed John Sewell's commission between the initial draft report with respect to the consent process. We don't believe we should ever give up if we believe in something strongly enough, and in so far as the appeal to the OMB, we believe strongly.

**Mr McLean:** All right. Thank you for that.

**Mr Winninger:** You raised an interesting point in number 6 about appeals to council not being subject to the Statutory Powers Procedure Act. I was going to ask the ministry for a response on that. I've always understood that the Statutory Powers Procedure Act ensures that parties have a right to be heard, that certain formalities are observed and that the rules of natural justice prevail. Is there a reason why these appeal hearings are exempt?

**Mr McKinstry:** May I?

**The Chair:** Yes, of course.

**Mr McKinstry:** I guess the government's view was that the proper place for minor variance decisions to be made was at the local level, that local council was the appropriate place for these to be made and that they could in fact give this to a committee of adjustment. So the review that was mentioned in the act is not intended to be a hearing; it is intended to be a review by council to make sure that council agrees with their committee's decision. That's why that provision was put in there, because it is a review, not a hearing.

**Mr Winninger:** I see. Thank you.

**Mr Cowtan:** I don't agree. That sounds very good, but I think that it—

**Mr Winninger:** My question or his answer?

**Mr Cowtan:** Your question was good, but I think that really it exempts—like, they can meet over at the Holiday Inn. You don't have to give notice, you don't have to hear the other side, you don't have to follow the normal rules. I think, you know, with all respect—and I'm a staff member so I probably am at risk here—councils are well intentioned, but because they get very political and very heated, they don't necessarily always follow the Statutory Powers Procedure Act. But when you're deciding a property matter, I think you should.

**The Chair:** Mr McKinstry with some clarification.

**Mr McKinstry:** Just one clarification. All council meetings have to be held in the open, and of course that particular provision is also being addressed in Bill 163, so we do see that when council's deciding these matters, they have to do so in the open.

**Mr Cowtan:** The end result, you see.

**Mr McKinstry:** The meetings, I was talking about.

**Mr Cowtan:** The end result of the meeting part, but I've been in this business since 1966 and I know that a lot of decisions are made long before they ever come to the public meeting.

**Mr Murdoch:** Not really?

**Interjection:** That's news to us.

**Mr Cowtan:** That's for the press.

**Mr Drummond White (Durham Centre):** I found your presentation to be very interesting. On the issues we're talking about in terms of how those decisions are made, I understand that the issue that could still be decided at the OMB would be whether or not the matter is truly a matter of a minor variance. My friend opposite has said many times that the minister hasn't defined what a "minor variance" is, but that's certainly something both which the minister has spoken about anecdotally but also would be defined through jurisprudence at the OMB.

But the issue that you bring up is a very, very valid one. That's the issue of, how are these decisions made, and are the decisions made prior to the council meeting? I think your wisdom and experience will certainly be noted as we go through the clause-by-clause. As you note yourself, this is not the end of the matter. The bill still has to go through clause-by-clause, and issues like this can certainly be addressed at that level. Thank you very much for your presentation.

**Mr Cowtan:** One thing I did forget to note, and it just came to my attention of recent date, is that the OMB itself is concerned with matters that are related—a severance, a lot being created and a variance that's related to it—in two different jurisdictions: "under appeal, review at council, appeal at the OMB for the severance." They'll both be heading off and the left and the right hands won't know what the other's doing. That was one of their other big concerns, and they've already lodged that concern with this committee, to my understanding.

1420

**Mr Eddy:** Thank you for your presentation. I notice the date on this pamphlet is June 1994, so was it issued early in June or in May, indeed?

**Mr Cowtan:** The very latter part of June. We had a conference on June 5. The bill was passed on May 18. We had someone from the ministry speak to our conference in Kingston and we immediately went to work.

**Mr Eddy:** So this would have gone to the ministry? This would have been in the hands of the ministry for some months?

**Mr Cowtan:** Yes, it would be there in mid-July, because there was a covering letter that went to the minister and I think Mr Marchese got a covering letter from the association president. There were a few of them. We went to every member of Parliament in the province with a covering letter, to people who we knew were going to be—we knew Mr Marchese was going to be Chair of this committee, so I think he got the covering letter, as did the minister and several other members of Parliament.

**Mr Eddy:** Thank you very much. I appreciate that you've done this and thank you for your presentation going over this, but have you had any indication that the ministry would make any changes to the act in view of these important things, to date? I would have hoped they'd have had time to digest them and indeed propose to make some changes, because I think you make some very valid points about making the provisions of the Planning Act, especially the time frames, more timely and



efficient. I appreciate what you're trying to do.

**Mr Cowtan:** I do sit on the working committee on Bill 163, but we've had only one meeting to date and basically, until the staff are advised otherwise, they believe that the bill is as they find it. I've had some notice of some minor amendments but not of consequence, which is of course the OMB one that I speak to.

**Mr Eddy:** I wish that had been done. Do you represent land division committees as well?

**Mr Cowtan:** I do.

**Mr Eddy:** I'd like your comment on what you feel about county and regional land division committees versus—compared to, I'd better say—committees of adjustment, for severances especially, and what system should be followed, whether it's better to have a uniform system in Ontario.

Just while you're thinking of an answer, on "minor variance," I think if we're going to use the term we must have some kind of definition or guideline for us all to know about or we're going to have chaos. It just isn't going to work unless we have "minor variance" with a definition, as some other members have pointed out. There's got to be some kind of guideline, I would think.

**Mr Cowtan:** I believe the courts have already tried to define "minor variance." Probably the most famous one is the Colekin case in Toronto, where nothing, as opposed to the requirement, was decided to be minor by the courts. So I think that it's in the appropriate jurisdiction for the local municipality committee of adjustment to make the decision. It's not a matter of quantum but it's a matter of circumstances related to the local municipality and perhaps the traffic loads of that street or the greenbelts that are there. I think that if this government attempts to, through regulation, define "minor" and leave this system as it is, as opposed to the OMB appeal, that's really just a wrong direction because the courts have held—and they should, through their staff, find the court decisions on the definition of "minor variance." It's not definable. How big is a "large" room?

**Mr Eddy:** So your stance is that minor variance should be appealable, but to the OMB.

**Mr Cowtan:** That's correct. I may have his name wrong, but I was before the standing committee on general government when the Comay report came out in 1983 and I believe the member then in opposition was a gentleman—and probably some of you know him—by the name of Mel Swart. I think I'm very close to his name if I don't have it exactly.

**Mr Eddy:** That's it.

**Mr Cowtan:** He said words to the effect, and I've heard it here today, "If it isn't broken, why are we fixing it?" I've heard it so many times, but nothing could be truer. The OMB doesn't want it. I don't know who wants to put this to the local government. The local government doesn't want it.

**The Chair:** Mr Hayes, some remarks?

**Mr Hayes:** Very quickly. You mentioned you had a questionnaire that you're sending out to the municipalities. Would it be available to the members of the committee? If you wouldn't mind, we'd like to see it.

**Mr Cowtan:** I could probably prevail on it.

**Mr Hayes:** If you could give one to the clerk.

**Mr Cowtan:** Basically, it is the sections of the bill and whether or not it's supported by the committee and whether it's supported by their council. That basically is the direction we're taking. We also have another questionnaire that we run as a survey every two or three years and we're asking to see how many elected officials are appointed to committees throughout the province, because once you have an elected official, you have no right of review. So it is a double-barrelled kind of—

**Mr Hayes:** If it's possible to get a copy.

**Mr Cowtan:** I will leave one with the clerk.

**The Chair:** Mr Cowtan, thanks very much for participating in these hearings.

McNAIR AND MARSHALL,  
PLANNING AND DEVELOPMENT CONSULTANTS

**The Chair:** Next is McNair and Marshall, Planning and Development Consultants, Ms Barbara Marshall. Welcome to this committee.

**Ms Barbara Marshall:** My name is Barbara Marshall. I'm a partner of McNair and Marshall planning consultants in Barrie, and I extend a very warm welcome to the legislative committee for visiting Simcoe county. Often we are not touched by your presence, and we certainly are delighted that you could come among the crickets and the smell of barnyard outside. It seems authentic to welcome you to our county.

My presentation to you is brief and in three parts. First of all, a very brief description of our firm; why I am here; and our submission. I don't suppose you've had too many people in the private sector come before you, and I do thank you for this opportunity for the presentation.

Our firm, McNair and Marshall, Planning and Development Consultants, has been in the Barrie area since 1976. Our work is about half for municipalities and about half for the private sector, including developers as well as those who are opposed to various developments. Our work covers all areas, from strategic planning through land use planning, zoning bylaws, official plans, subdivisions, special studies.

Why am I here? First of all, it's an absolute delight that you're here because I wouldn't have shown up if you hadn't come to Barrie today, or to Midhurst, to Simcoe county. Secondly, I've been very involved in the Sewell commission work from the beginning. I think that work should be continuing on and I would like to put my shoulder to the efforts that have gone on over the last several years. And thirdly, I think the concern on the part of various sectors in this province is to throw this whole Bill 163 out, and I feel very strongly that there is a lot here to support. That is the reason for being here.

At times, I think people wonder why we plan and if we plan effectively in this province. I would be loathe not to say that I have had those doubts as well. Often-times you think, "Well, where's it all going?" Sometimes good planning just doesn't show. In the rural area, if agricultural lands are left in agricultural uses, then that's good planning. It doesn't really show when you drive around and it doesn't show in the urban areas when water

is attached to people's homes, when there are roads and schools and hospitals and all the services that make communities work.

When we go to the United States and see areas where there is no planning, it certainly begins to make a little sense, especially when maybe you've visited some of the communities in the southern US where people now have walled communities, where people feel comfortable only when they hide themselves behind walls for security purposes. Even for planning purposes in the United States—private, because government has abandoned planning—people are looking at setting up behind their walls, planning things even down to the colour of mailboxes. So please don't throw everything out in Bill 163. Abraham Maslow, an American social scientist, said that if anything is worth doing well, it's worth doing awkwardly at first. Perhaps we are doing this awkwardly, but we at least are doing it, and I commend you for that.

1430

My submission: I guess as you've gathered, our firm supports the overall intent of Bill 163. We are suggesting several revisions, mostly based on the Sewell commission work, in order to improve the proposed legislation. Our proposed revisions are as follows.

First, provincial planning: We think it's kind of tragic that the province is telling municipalities what and how to plan in the Planning Act but it's doing very little planning on its own. I look to places like New Brunswick, which you may be familiar with. New Brunswick is promoting itself as being part of the future of integrating its economy and its environment and new technology. When I look at what other provinces are doing and I look at what this province is doing, I feel it's kind of tragic that the whole concept of the overall provincial strategic plan was lost. It was in the original Sewell commission reports and watered down and nothing there about provincial planning.

I very much urge you to take a look at the possibility of integrating a strategic plan. If everybody knows what our vision of the future is and where we're all going, then all the little parts in the Ministry of Agriculture and the Ministry of Environment will start to fit together. At this point, I don't think they do as cohesively.

We have to have a vision of the future and where we're going as a province. I think it's imperative. If you look at our newsletter, we've done a lot of reading on what's happening in the future, what's happening in communications and technology. I think that as a province as a whole, we have to take a look at these questions of the future and how we're going and how as a province we fit in. I would really love to see the province, in terms of the changes to the Planning Act, be compelled, like all the municipalities in this province, to plan effectively too.

So, point 1: Please look at an overall strategic plan that we can all be involved in preparing as part of our changes to the Planning Act.

Second, provincial responsibility: I think it's equally imperative that not just the Ministry of Municipal Affairs but all government agencies be bound by the policy statements that have been developed and are going to be

incorporated once this Bill 163 is approved. All the ministries were involved in preparation; all the ministries should be involved in sharing the responsibility for implementing.

Official plan content: Under Bill 163, you're suggesting that an official plan should be simply a document that's approved by an approval authority.

We work for a small municipality in Haliburton which hasn't had the money to "buy" an official plan. They've really been seriously thinking, "Yes, we need an official plan, but we don't need a full-blown official plan like everybody else has, with all the incredible background expense." I said, "Let's take a look at what is the definition now in the Planning Act of an official plan and maybe we can meet that definition." I spoke with Ministry of Municipal Affairs staff and said, "Look, we can prepare an official plan that's not going to be gold-plated, but it's going to meet your definition of an official plan."

When I opened up Bill 163 and saw that an official plan is now something that's just approved by an approval authority, it doesn't give enough guidance as to what an official plan is. So I would strongly recommend that this section be revised. Go back to the existing Planning Act or look at what it is that we really want to see in an official plan, because that is the basis of planning in Ontario, the official plan for municipalities. It's a shame that we don't even say in the act what it is, except that it's approved by an approval authority. I really don't think that belongs in regulations; it belongs up front in the Planning Act.

Front-end public involvement: I think this was one of the tremendous recommendations from the Sewell commission, and we've seen this work in communities. If the public is involved from the beginning in a project, whatever it is, it means the diverse opinions in a community can be represented at the beginning, those concerns and questions can be integrated into the process right from the start and it becomes everybody's project. It just doesn't become the developer's project or the municipality's project.

It was really a shock to read through Bill 163 and see that the Sewell recommendations in this area were dropped entirely from Bill 163. I feel that's a real shame. I think front-end public involvement means less cost and less money and it means we're that working together from the beginning. It doesn't mean that we're fighting from the middle through to the end. It's essential for everybody to start at the same point in time and not have the public come in at the end. Please change.

Public notification: The Sewell recommendations are there. They're number 76. I believe that probably when the ministry gets to the detailed regulations, much of this will be included, but I do think it's important to have it spelled out clearly in the Planning Act as to where we're going.

Dispute resolution techniques: I should add that my partner and I have attended—well, frankly, we've lost track of the number of hearings that we've given evidence at; I think it's well over 100. We are experts in giving evidence at the Ontario Municipal Board, but we also are very, very keen to try out our new mediation



skills. We're members of SCRO, the Society for Conflict Resolution in Ontario. I've also taken courses in mediation.

I would love to be doing this kind of work, rather than spending a lot of money and energy at the Ontario Municipal Board fighting it out, being the professional hired gun that's hired at the last minute to fight it out. I do think there are wonderful opportunities for conflict resolution if those are integrated into the process. I'm delighted to see your section 65, but I'd like to see this really become part of planning in Ontario. The only place I've been able to use my mediation skills is in my family conflicts at home, so I'm really getting a lot of practice, but I'd love some professional practice as well.

**Appeal rights:** I disagree with your recommendations in Bill 163 that you lose the right to appeal if you have not made a written or oral submission at a public meeting, and this occurs throughout Bill 163. Often people aren't fully aware of what is being proposed. It certainly means that you're going to give me a lot of business, writing a lot of letters for every public meeting that's going on, objecting or supporting whatever is going on. Frankly, I don't think that's the way to do business and I don't want to earn my money that way. So please change that provision. I don't think that serves the process well at all.

**Septic systems:** It's funny to think that we should be dealing with septic systems in planning, but we've been in this province over 200 years. A lot of the development in this province has already happened. The Planning Act focuses on new development, but I really think it's time we started to look at the existing development that's around us. From the research that we've done in terms of safe drinking water, I think it's imperative that we start looking at septic systems, so I urge you to look at changes in this area. Certainly in Europe, in the United States and in other jurisdictions septic systems are a problem and I think somebody is going to have to look at it. Time to bite the bullet; let it be us.

**Site alterations:** Bill 163 does not give jurisdiction to municipalities in the area of tree-cutting and vegetation removal. We just had a situation here in Barrie where developers have gone in and clear-cut prior to development. In that case, the municipality appears to have chosen not to take any responsibility in that area, and I think it's a shame, but I think municipalities should be given authority and responsibility in that area.

Lastly, although your area of concern is not policy statement, I do understand that there are changes being contemplated to the policy statements as they've been sent out for general circulation. We have run across a problem with the definition and requirements for speciality crop land, and I bring that to your attention hoping that staff at the ministry will be able to take a look at this area of speciality crop land.

1440

The Sewell commission report suggested that when communities are expanding, they may have to expand on to speciality crop land if there are no other choices. I think that sort of wording belongs. Certainly here in Simcoe county we've got a lot of areas that have been in

potato farming, no longer an economically viable use of land. If it was cropped in potatoes some 10 years ago, it may take a second look. Certainly we're not in the same situation as the tender fruit industry in Niagara or, say, the apple area up in other parts of the province. So please pass this on to whoever is dealing with the comprehensive policy statements.

I thank you again for this opportunity to speak to you, and I certainly welcome any questions. If I can't answer them, I will have my partner have a go at those too.

**The Chair:** Very well. Would you like to sit at the table as well, in the event that we need you? Mr Hayes has some remarks first, and then we'll go around in rotation.

**Mr Hayes:** Thank you very much for your very good presentation. I guess the one concern is, you talk of the first issue there, talking about the provincial planning and the province needs to plan. I'm very pleased to hear that, because what we are doing in this province is putting together some very good, clear policies and guidelines for municipalities, developers and others to follow.

We have lots of presentations saying that this province is going too far, I think even the word "dictating" to them what they have to do. I think what we're doing is trying to guide municipalities and trying to put in good, comprehensive planning in this province. So I'm pleased to hear you say that and I hope other people may hear the same thing, because what you're requesting is exactly what this province is in the process of doing.

On the other part about the official plan content, I don't know if there's a misunderstanding or not, but when we talk about the official plan, it does spell out in section 16, page 10, that the "official plan shall contain the prescribed contents and...shall contain goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality," and it goes on. Also, what it does here is give the province or the ministry the opportunity to consult with such groups as yourself and others. I just wanted to point that out, and if you want to make any comments, fine.

**Ms Marshall:** I'd like to respond in two ways. First of all, the strategic plan: I agree with you that the changes to the Planning Act and the Planning Act itself is a document that tells municipalities how to plan. However, there is no document in effect that says what is happening to this province as a whole, that the province has decided how it is going to run itself, and that's what I would dearly love to see, a vision of where this province is going and how it's going to get there. Not that the province is telling municipalities, "This is how you're going to run." I would like to see the province as a whole say, "This is where we're going."

Secondly, on the official plan, in the definition section it simply says, "the prescribed contents." Let's put that up front. Let's put it right in the act. Let's not put it into regulations. I'd love to see all of us know from the beginning what is to be included in an official plan, not leave it to staff to work that out at a later date.

Thank you very much for raising those.

**The Chair:** We should move on, Mr Hayes.

**Mr Hayes:** Okay, just real quick, it's not the staff that's going to be doing it. There is an implementation task force that covers all stakeholders in the province that will be dealing with those regulations on the policies.

**The Chair:** Mr Wessenger, five minutes, and there are a few other speakers in the event that you don't take all the time.

**Mr Wessenger:** It's a pleasure to see you here, Barbara, and you too, Al. You always make a thoughtful presentation and stimulate people you present to.

It was kind of interesting when you mentioned the aspect of a strategic provincial plan, because I know that's something that's been talked about for years and years and something that, as I say, has been around as long as I've been around in this planning area. Is it fair to say, though, a strategic plan could in effect constitute a series of policy statements? In other words, that's what it would be, a provincial strategic plan. Is that fair to say?

**Ms Marshall:** No. I think a strategic plan should have a vision of the future. I think the policy statements describe goals as to what is expected in certain areas. But as an overall vision of where this province is going, I don't see it.

Thank you very much for your kind comments at the beginning.

I think it's interesting that York region has been without an official plan for some 20 years, and finally York region now has a new official plan. It was preceded by a strategic plan, by people getting together and deciding, "Well, this is where we want to go," and then, "The official plan is going to take us there." I think it's really imperative as a province that we go through that process as well.

**Mr Wessenger:** Just following up your point on provincial responsibility with respect to provincial policy statements, as you know, there is a requirement that each ministry put out a policy statement with respect to the Environmental Bill of Rights. Would you envisage that this could perhaps be incorporated into that type of policy statement for each ministry?

**Ms Marshall:** Yes. I think once we have an overall vision of where the province is going, then each ministry would incorporate its part of the vision in its mandate. It's as if everybody's running around, the Ministry of Environment and Energy is doing its thing, Natural Resources is doing its thing—often those guys conflict—OMAF is doing its. They conflict with our friends in the aggregate area, and as a result there's no picture as to how it all fits together.

I foresee real problems with this statement that we all have to "have consistency with." I think it's going to be very difficult. I'm going to end up saying, "Well, we have more consistency with statement X than statement Y." But if we knew where the province wanted to go overall, we'd say, "But this makes sense, because you're saying that economic sense in this area is critical, so we're going to go for it."

That's kind of fuzzy, but—

**Mr Wessenger:** The third aspect is front-end public

involvement. I've been seeing the way, for instance, the city of Barrie has generally done its official plan amendments. I was always under the impression that they did that on a front-end involvement. Maybe I'm wrong. Is that what you mean by front-end involvement, that type of situation? Are there many areas, for instance, that don't do that type of preliminary—

**Ms Marshall:** I think most areas don't. Most areas develop an official plan, a change to the zoning bylaw, and then announce it to the public and say, "That's it; take it or leave it." Even the city of Barrie unfortunately has been known to do that on occasion. It's common. That's the way we do stuff.

But instead, if we said, "Okay, look, we're thinking about doing an official plan. These are some of the things we're thinking about putting in it. Hey, public, what do you think?" they may say, "Well, we want this, this and this." We all get together and then we say, "Okay, these are our priorities, this is what we're going to study and this is where we're going to direct our resources."

I think that way we're going to save a lot of time and a lot of money. Otherwise we end up in a system which we have where everybody fights it all out at the Ontario Municipal Board, where sometimes people say, "This is the first time we've had a chance to talk." That's expensive. That's too expensive. It gives me business, but it's not the way to do stuff.

**Mr Wessenger:** I could probably go on. I better defer to my colleagues. Thank you very much. I appreciate it, Barb.

**Ms Harrington:** Thank you very much for coming forward. I found your presentation very reality-based. You really know what you're talking about because you've dealt with that. The same thing goes for the woman consultant this morning. I found that was very helpful.

My question is following from what Paul was talking about. Last week we heard Dale Martin, who's a provincial mediator, talk about changing the personality of the system and getting people involved right at the beginning. I believe you stated that the Sewell recommendations were dropped with regard to front-end public involvement, so I want to ask the staff if that is correct, because, to my knowledge, I believe they're still in there, that people are going to be involved right at the front end.

**Mr McKinstry:** Yes. Indeed, all of the Sewell recommendations may not have been captured exactly, but very much we planned through this legislation to have an up-front system, and we've done that in a variety of ways. We're requiring that councils have time frames, of course, but that they have public meetings. We're requiring that there be 30 days between the time they have their public meeting and the adoption of their plan, just to make sure that people have time to talk about issues. So certainly our intent is very much that we keep involvement up front, and if you have further suggestions, we'd be happy to hear them, because, as Ms Harrington says, we are very keen to make sure that things are done up front and that problems get resolved up front rather than later on at the OMB.



**Ms Harrington:** So the Sewell recommendations have not been dropped then?

**Ms Marshall:** In my opinion, they have been dropped. Sewell said that at the beginning of an official plan, council is to outline a report to the public saying what they intend to do with the official plan and how long the time frame. In Bill 163, there is none of that. There is a prescription for a public meeting, but it is not at the beginning of the planning process, and I would really like to see the Sewell wording, as close as possible, incorporated into it. Certainly, there is the 30 days and everything else that you've mentioned, but there is nothing that says that you have to have a meeting at the beginning. There is no front-ending, as I see it, when I read through Bill 163. And if there's a real tragedy in this whole thing, this is it.

1450

**Mr Eddy:** Thank you very much for your presentation. It's very helpful, as all the presentations are. I'm amazed at the different points that are coming up, many of which have reinforced what you're saying.

You've made many points. Many of your points were because the bill hasn't followed the Sewell recommendations, which were the result of many public meetings, as I understand it, and I think it would be well to look at those again, revisit those and use some of them, because this is a new act. The previous one was 1983. It's going to have to do for a while, and it should be done right, so I appreciate the points that you've made.

The strategic plan for the province: I'm most interested in that, and you're very convincing. It would seem to me that it would help government and the various ministers and ministries be on side and promoting the things the province has determined it wants to be or should become, and I can see it with agriculture. If we want to continue to be the food basket of Canada, or maybe a larger area, then we can gear many policies towards that, including economic policies, and the same with the industrial heartland, which some of our areas are, and the commercial centre, and so many things. So thank you very much.

The one thing I wanted to ask you about was your opinion about two-tier planning. In Ontario, as you know, most of the local municipalities have official plans. You mentioned an area near Huntsville, was it?

**Ms Marshall:** In Haliburton. Glamorgan township, actually.

**Mr Eddy:** Haliburton is a county.

**Ms Marshall:** Right.

**Mr Eddy:** It may be required to have an official land use plan. Some of our upper tiers have policy plans, which I favour, where they determine what they want. Like the province has with provincial policies, local official plans must incorporate those.

It seemed to me that what's going to happen with this act is that it's going to require the county of Haliburton to have a county-wide official plan, which will direct your small municipality to go through the throes of getting an official plan that's different to what you've decided you want to do.

I'm not in favour of two-tier planning. I think we

should have the option: have upper-tier, lower-tier, or both, if people want it. Could you talk about that a bit? It would help me.

**Ms Marshall:** Interestingly enough, in this county of Haliburton, as well as Simcoe county, we have at the minute no-tier planning in the sense that there is no official plan in place for either the county or the local municipality.

**Mr Eddy:** I didn't realize that.

**Ms Marshall:** Yes. I do think it can be worked out, maybe in your way of the policy on a county-wide basis and then the local municipality. In the Haliburton area, the real problem is money. There's no money for the county plan and there's no money for the local plan.

I think some plan is better than no plan. How that works is going to be tough, because in the past the province has given grants to municipalities to help them plan. Now there's nothing left. I guess I have to be a practical person and say, well, go for something rather than nothing.

**The Chair:** Some short point.

**Mr Alvin Curling (Scarborough North):** Very short. The point I want to make is something that you have already sort of mentioned, if I'm hearing you right, that the legislation could've been stronger, which I understand, and also Sewell has made a point that the intent is to make the regulation take up the slack for the legislation. They said there are some important aspects of this Planning Act that should be in the legislation, and maybe I'm just making a comment. Am I hearing you right, that you cannot say it loud enough to the government and those who are making it to make sure that it's in the legislation, not the regulations?

**Ms Marshall:** If it's worth saying, put it in the act.

**Mr McLean:** Welcome to the committee.

**Ms Marshall:** Thank you. You've all been so warm and cordial. I've really enjoyed this, thank you.

**Mr McLean:** Thank you.

**Mr Hayes:** Because the exit's that way.

**Mr McLean:** When we were in Niagara Falls we had some delegations that were very up with regard to public notification, and I see in your report the Sewell commission recommendation 76, to provide for improved notification, including signage, a registry and rural notification. They're not included in Bill 163. There were several delegations which felt that with the short time frame we have now with minor variances that there should be a notice maybe placed on the lawn that this property is under minor variance. Is that what you think would be appropriate, that should happen?

**Ms Marshall:** I think it should be clearer. Certainly, we work in rural municipalities in Simcoe county, and oftentimes people haven't a clue what's going on. It may be in a newspaper that they just didn't happen to read. So I think there has to be improved notification or people find out too late and then they get angry, and angry is not how we should be working; we should be working together. So if it means putting a sign on a lawn or some other method, then let's do it. Let's forget this under-the-

table stuff. Let's make it up front, and let's work together. Forget the anger.

**Mr McLean:** We had several presentations on that very issue. The other was with regard to appeal rights. That's another area where it passes by and they haven't sent in their objection or their concern and all of a sudden they're too late. That is under clause 29(b), page 15, and clause 38(b), page 17, where you indicate that this is. I think those two areas are a major concern when you're shortening the length of time for people to be notified. Now you send a letter in the mail and it doesn't always get there or it's late. So I think the points you make with regard to the appeal rights and with regard to the public notifications are very valid.

The other issue that I wanted to deal with—it was in the Sewell report—is the septic systems. If my memory serves me right, reading those recommendations, the septic systems were supposed to be inspected every five years at the expense of the property owner. Unfortunately, I see this as a policy for all of Ontario, and there are a lot of places in Ontario—as I said, you get two miles out of Wawa, nobody else around you, why do you have to have your septic system inspected if there are no lakes or no runoff? Where I'd like to see it is around our lakes, where cottages have been turned into year-round homes.

I don't know if there is some system we could've started on a priority basis, but I see that you strongly support the Sewell recommendations, which I don't totally agree with because of the fact that all Ontario is not the same. So I wanted to make that comment.

With regard to the specialty crop land, could you explain that a little clearer with regard to the vegetable crops, such as potatoes, for their development to be limited.

**Ms Marshall:** I'll let Alan do that one.

**Mr Alan McNair:** Mr McLean, the concern there is that the policy statement set out some very specific prescriptions. It says that under absolutely no circumstances shall specialty crop land be used for any other purpose. But if you read the definition that is also included in those policy statements, and it's the same definition I believe that was in the Sewell commission's final report, it includes a lot of things, not just the lands that we are probably most familiar with, like the tender-fruit-growing area in the Niagara Peninsula, areas like the Holland Marsh.

1500

For example, it just says land that's being used for vegetable crops. Well, potatoes in Simcoe county are a vegetable crop. There was a time when Alliston was sort of the potato heartland of Ontario. Now the potato industry is a relatively small player there, particularly in the processing aspect of things. That's changed. But it is conceivable that somewhere in the planning process, of land that once grew potatoes it could be said, "Oh well, that was potato land, and therefore it's inviolate," even though it may have been growing sod for the last five years. Maybe it was used for growing tobacco before that, whatever.

There is an evolution in these things, and it's an area

of concern because we have rural communities of varying sizes within Simcoe county. One of the things, in terms of the environmental improvements, that this bill is attempting to do and the ministry policy in various ministries, particularly the Ministry of Environment and Energy, is attempting to do is to improve the quality of hard services in these rural communities: water systems, sewage systems. But it's very expensive to do that if the community is static, if the community cannot grow. If it has a reason for needing the services, it probably has a reason for being able to grow at a reasonable rate.

It's a problem for the rural municipalities. I can think of lots of townships in Simcoe county and in other areas outside of Simcoe where there may be a number of small service centres or whatever of 500 to 1,000 people. They may have some partial services; they may have no pipe services at the moment. They may require those to correct existing problems with groundwater quality or drinking water quality or whatever, but there's substantial cost involved in that. If there's no growth permitted within those centres in a compact form and consistent with all the other things the policy statements are talking about because of an overreaction to what is defined as specialty crop land, I think we have to look at that. We're hoping that the committee will suggest that this be looked at.

I have spoken with people in the Ministry of Agriculture, Food and Rural Affairs. It is a concern to them as well, and they're trying to figure out how to do it. But the way the policy statement is drafted right now, the way it's been released, it's very, very prescriptive, it's an absolute. I think there are certain types of lands where it needs to be that way and there are other types of lands which might fall into that same definition where it doesn't. I think Mr Sewell made a better attempt at distinguishing between the two than the policy statement document does.

**Mr McLean:** Is the Ministry of Municipal Affairs listening to the Ministry of Agriculture and Food?

**The Chair:** We assume they are. Ms Marshall, we just wanted to say the committee enjoyed your presentation very much, and we thank you for coming today.

ENVIRONMENTAL ACTION BARRIE

**The Chair:** We'll move on to Mr McNair from Environmental Action Barrie. Please begin.

**Mr McNair:** Thank you, Mr Marchese. I trust that Mr McLean, as a former member of the council that sits in this building, has extended you all a warm invitation here, as well as Mr Wessinger, being our other local member of the provincial Parliament.

**Mr Eddy:** I hope they will tonight.

**Mr McNair:** I hope they took you to lunch.

Anyhow, this presentation is on behalf of Environmental Action Barrie. You have a copy of the presentation in front of you, and on the back of that is a brief outline about the group. It is a local citizens' environmental group that was formed in 1990. As I said, the background is attached here. Most recently, Environmental Action Barrie has been approved as a major partner in a green communities initiative for the city of



Barrie, which is a program that's run under the Ministry of Environment and Energy.

I have been a member of Environmental Action Barrie since it was formed in 1990. It has no connection directly with this presentation, but the city of Barrie also has an environmental advisory committee of which I have been a member and the chairman for the last four years. But this is not a submission on behalf of the city; this is strictly on behalf of the local environmental group. I'd invite you to look through the items that this group has been able to accomplish; you'd have a better understanding of where we have come from.

Our objectives are promoting measures and perspectives that increase public awareness of environmental issues and that further solutions to environmental problems, and educating all persons so that informed and environmentally wise lifestyles and consumer habits can be made. We also operate a recycling depot in the Barrie area where recyclable items that are not otherwise collected can be collected and sent to appropriate processing operations. That of course is done with volunteer labour and materials and everything else, because some of the recycling program materials are simply not economic to handle in any other way.

Environmental Action Barrie strongly supports the work that was undertaken by the Sewell commission to introduce the concepts of sustainable development and ecosystem planning into the basic land use planning framework of the province of Ontario. We would suggest, though, that Bill 163's reference—and it's in clause 1.1(a)—to "sustainable economic development" is too narrowly focused and should better read simply as "sustainable development."

I get constantly concerned when people start talking about economic development and environmental protection like they're two different animals, it's two sides of the coin and you have to have one or the other, it's got to be heads or tails. You can't buy anything with a coin unless you spend both sides of it at the same time, right? I mean, you spend the coin and the head is gone, the tail is gone.

Jon Grant, a very interesting man who's the chief executive officer of Quaker Oats Canada and has also been quite involved with the Ontario Round Table on Environment and Economy, is fond of commenting on how it always perplexes him when he hears people who don't understand that the long-term economic health of the province or anyplace else is inextricably linked to the long-term health of the environment, that the two have to go hand in hand if we want to be around here five years, 10 years or 25 years from now.

If we want an object lesson in that, all we have to do is look at what we found out about eastern Europe since the Berlin Wall and the Russian hegemony over the satellite states and its own empire collapsed. There are environmental horror stories all over the place. We've created our own horror stories in eastern Canada in the fishery by overexploiting it for economic purposes, and now we have both an environmental and an economic nightmare, because we've got all kinds of people who we were going to keep working in the fishery, and there's

nothing for them to catch. Narrowing it to a reference to "sustainable economic development" is a narrow focus that I don't think the bill should have.

Secondly, the requirement about the decisions that the Ministry of Municipal Affairs and all the local governments have to make to be consistent with provincial policy statements should also apply to all the provincial ministries and agencies, which the present bill says they're supposed to have regard to, but now they don't even have to have regard to it if this one goes through; they can just ignore it. I mean, that's kind of dumb, folks, if you pardon my comment. We're either all in it together or we're not in it at all. If we write it that way, I don't know what kind of planning it is; it certainly isn't strategic planning.

The principle of ecosystem planning, which is identified sort of early on in the purpose of the act, should carry right on through from there to the mandatory planning content regulations. I didn't comment in writing about that, but I also signed the submission that Barbara made on behalf of our firm. I would agree, and I know the environmental people I've talked with agree, that, hey, if it's worth putting in, it's worth putting up front. The problem is that the Legislature doesn't get to debate regulations; they just come out and that's it. We would like our elected representatives to debate those provisions and be satisfied that that's what you're going to stand or fall on, folks.

The city of Barrie has a tree-cutting bylaw, which was passed under the Trees Act. They passed that about three years ago because they had several situations where people had gone in and whacked down trees on sites that were either well in advance of development or in some stage of development but before the city had any legal authority to say, "Now we have an agreement with you, and those have to be protected." So they passed a bylaw. Now they're not even enforcing their own bylaw, and there is no recourse for citizens to force the municipality to take action on that.

We are suggesting that such things as unauthorized site alteration, filling or removal of fill, tree-clearing, those types of things, should be prohibited. Whether that should be done under the Planning Act or under the Municipal Act, there are a number of alternatives, I guess. I'm not a lawyer; I'm a planner. But citizens should have recourse to be able to go to court and get an injunction to say, "That's got to stop." Now, they have it in certain other functions if something is being done illegally, but they don't have it in this case, and that's the legal advice that was given in this particular situation.

**1510**

It's all well and good to say that municipalities may pass bylaws to do these sorts of things, but if they don't take advantage of it and don't pass the bylaws, or if they then, having passed the bylaws, choose, for reasons which in this particular example I've used have been totally unexplained—then that's a pretty sorry state of affairs, and it simply causes the public at large to lose respect for the political process and the laws that their politicians make for their benefit and the laws themselves.

The right to appeal an official plan: As a practising

planner, all I think is that the way Bill 163 is written now it's going to mean everybody and his uncle is going to be sticking their oar in. At the first public meeting, they'll make some submission or some comment or whatever, and you'll have hundreds of these things, potentially, to try and track down and figure out, because if they don't, then they wind up with no appeal rights down the road.

These projects often take months and years to get through. Somebody who moves into the neighbourhood a week after the public meeting or a week after council has adopted the bylaw may or may not have a legitimate grievance about a particular development that's proposed, but under Bill 163, as I understand it, they will have no appeal rights. So I don't think that's the way it ought to be. I think that rather than expediting the process, which I think was the intent, what it's going to do is just jam it all up at the start.

The issue of septic systems was touched on earlier. I grew up on a septic system. I know Mr McLean was a farmer out in Oro township for a long time, and I'm sure he didn't have a sewer out at his place. They can work, but there are a lot of things that we put into them these days that they were never really intended to handle, a lot of chemicals and cleaners and things like that, none of which are taken into account in the approvals that are given for septic tank systems.

On an individual basis, septic systems are not even dealt with in terms of things like phosphorus and nitrates, which are evaluated if you're doing a subdivision development but never on an individual severance. It may not be a problem for one lot or one new house on a 100-acre farm, but if you've got three or four houses in a row going down a rural road, they can be contaminating each other's wells and not even be aware of it, and contaminating not necessarily from a public health standpoint, which is just bacteria, but from a water quality standpoint. That could be happening in Wawa or it could be happening in Oro township, Al. It could be happening anywhere.

So there is a need for regular inspection of those systems. You have to keep in mind that we don't look at all the things we probably ought to be looking at with those. We're starting to look at more of them with our sewage systems and our municipal water systems, but there's a lot of stuff out there that we just don't know about.

So the problem is that with many small municipalities they simply don't have the staff to be able to take this on, yet the implication of the bill is that this could be delegated to the local staff. Well, now it's sometimes delegated to health units, which are constituted on a county or sometimes a multiple-county basis. They are only looking at the public health aspect of it, when the health unit looks at things, in most cases; they are not looking, unless there is a particular local policy involved, at the other implications for groundwater quality, and they should be.

But a lot of local municipalities don't want that responsibility. It's just one more thing. They don't have trained people to do it, and if you tell your bylaw enforcement officer that as well as being your secretary of the committee of adjustment and everything else and the

dog catcher he's now got to go out and inspect septic tanks, how are you going to train him? Where are you going to find the time off from doing bylaw enforcement to send him on the required training courses to make him into a qualified septic tank inspector?

That's something for the Ministry of Environment and Energy, or if they want to deal with it jointly with the health units; that's where that level should stay. There may be urban municipalities which have got the staff. If they're urban municipalities, they probably haven't got the septic tanks.

**Mr Eddy:** Yes, a lot of cities have them on septic tanks.

**Mr McNair:** Yes. Also, we get to look at the systems that are there, because much of the development, as Barbara said, is already in place and we have problems in the rural areas and the cottage areas where the existing water quality problems in groundwater and in recreational lakes relate more to what's there already. But if they've got their approvals, whenever they went in, whether it's two years ago or 40 years ago, there isn't much of an enforcement, cleanup and check on them, and that's something that needs to be done.

The appropriate legislation may be the Environmental Protection Act. Mr Sewell talked a lot about this stuff, but I don't see anything in Bill 163 that's going to do anything about it, and that's a definite concern.

Mr Chairman and members of the committee, thank you very much. If you've got any questions, I'd be happy to respond.

**Mr Wessenger:** Thank you very much for your presentation. The first question I'd like to ask you is, in the definition they do have—this is with respect to sustainable development, and I certainly agree with you that sustainable development is the meaning that we want to achieve in this act—I gather you don't feel that "promoting sustainable economic development and a healthy natural environment" covers the whole aspect of sustainable development. Is that what you would say?

**Mr McNair:** I think the problem is that by throwing the word "economic" in there in the middle of the phrase, we bias the focus of it. I think sustainable development includes the economic, the social, the whole thing. Planners talk a lot now about healthy communities. They're not just talking about public health; they're talking about communities that work, that provide employment opportunities for people, that provide recreational and educational opportunities for them. So to narrow the focus by saying "sustainable economic development," I just think is too narrow.

**Mr Wessenger:** Yes, I would tend to agree with that. I'm just wondering if I might ask the ministry to explain why they used the words "sustainable economic development," because I was just listening to a CBC program last night about sort of the dispute between economists and biologists with respect to population, and it was somewhat interesting to hear the criticism of the economic aspects and how narrowly focused they were. So I'd to have some comment on why that phrase was used.

**Mr McKinstry:** Yes, we did look at the Sewell



commission's recommendation on the purpose of planning. We did appreciate that the purpose of planning really sets the tone of the act. The government felt quite strongly about the fact that economic development was important in this province, as well as environmental protection, and that's why the decision was made by the government to put in the word "economic" along with "sustainable."

**Mr Wessinger:** Those are my questions.

**Ms Harrington:** I'd like to deal with your second recommendation and that is, "The requirement for decisions to be consistent with provincial policy statements should apply to all...agencies, including Ontario Hydro." That seems to me that you are indicating you feel it's very important that the wording be "consistent with" as opposed to "regard to."

**Mr McNair:** Yes, I think I would agree with you, Ms Harrington. The real problem I have is that the way it's written now, as I said in my submission, they don't even have to have regard to it. They're out of the loop. Municipal Affairs has to "be consistent with," and the other guys, it would appear, can do what they please. That's very inconsistent with anything.

**Ms Harrington:** We've heard from quite a few municipalities and some, just some, have said—and in fact one was this morning—that the wording "be consistent with" rather than "have regard to" is similar to the difference between "making a sincere effort" and "toeing the line," and they conclude that it is a major erosion of local council's discretion in planning matters. What would you say to someone who presented that?

**Mr McNair:** It may be an erosion, and I guess if it is, I'd have to ask why. Is it because they haven't understood what provincial policy was, or is it because they've said, "Well, we've had regard to it and we've ignored it," effectively? That's the problem.

But there's a need for the policies to be clear, and I'm aware that there are some potential conflicts. I mentioned the one about the specialty crop land, but there are some other potential conflicts between the various provincial policy statements too that I think the committee's going to have to wrestle with.

1520

**The Chair:** Mr White, do you have one question?

**Mr White:** Yes, I do.

**The Chair:** One then.

**Mr White:** Thank you. I'm very impressed with your presentation, Mr McNair—

**Mr McNair:** Thank you, sir.

**Mr White:** —and it seemed to be quite similar to the one we had just before you in a number of the recommendations.

**Mr McNair:** We do have two computers.

**Mr White:** I'm going to ask you about one of the questions that arose actually in the earlier presentation—it isn't even in yours but I'm sure you'll stick by your partner's recommendations—and that is in regard to the issue about mediation.

What we have presently is a system that works very

slowly, when it works at all, in terms of dispute resolution.

I heard on the radio this morning about a problem, from an area not too far away from us, where the lawyers' and the legal costs would have been far less than the cleanup costs for the company involved. Their interest, of course, is in prolonging a battle with the government, with the Ministry of Environment and Energy, and I'm wondering, in regard to the issue about dispute resolution, whether that might not be a means of speeding up that kind of issue to the effect of making a resolution of that realizable while people are still alive in that vicinity.

**Mr McNair:** I think the idea of mediation and taking alternative dispute settlement mechanisms is an excellent one. I think it's long overdue. It does require a degree of good faith on the part of all the parties.

The issue of the tree clearing in the city of Barrie that I referred to took place while the council was in its August recess, while an appeal to the municipal board of the rezoning of this site was being mediated by a gentleman from the OMB and while the residents had had notice that a bylaw to exempt the site from the tree-clearing was going to be considered in September. If you don't have good faith by all the parties in the mediation, you'll have no success in mediation.

I still think—and we have recommended it to any clients of ours, whether they are developers, municipalities or appellants of a particular planning decision—that if you can settle it, it is far better, it is far cheaper. It doesn't necessarily make us as much money, because there's a lot of preparation time and appearance time and stuff involved in OMB hearings. But if you want to get something out of it, save the money and spend it on the landscaping instead of spending it on the lawyers and all the consultants that you have to hire. There's no question that the mediation approach is an excellent one and should be strongly encouraged in the province.

**Mr Eddy:** I appreciate your presentation. There are some very important matters in here, and the first one is 1.2. If the province is going to make everybody go through the hoop, we'd better be prepared to go through a hoop too. That's awfully important, and 1.4.

I'd like to go back to the previous presentation, if it's allowed, and it was something you said.

**Mr McNair:** My name is on that one too; it's okay.

**Mr Eddy:** Yes. You said the officials of the Ministry of Agriculture, Food and Rural Affairs are confused and concerned about wording in the agricultural land policies. Wouldn't the agricultural land policies have been drawn up by OMAFRA? Who drew up that policy?

**Mr McKinstry:** The policy was drawn up, first of all, by the Sewell commission and then revised by the government with OMAFRA, that's the Ministry of Agriculture, Food and Rural Affairs, and the Ministry of Municipal Affairs.

**Mr Eddy:** I hope we can be assured that the people who are in those ministries who are going to be following or policing, or whatever, those policies are endorsing them and supporting them.

**Mr Grandmaître:** You say that one of the activities you're interested in and promoting is tree planting. Does Barrie have a municipal tree bylaw?

**Mr McNair:** A tree bylaw under the Trees Act to protect existing trees, yes.

**Mr Grandmaître:** I was told some two or three weeks ago that apparently the provincial government is working on a piece of legislation.

**Mr McKinstry:** Not as far as I know. There was a consultation on the Trees Act some time ago, but that has not proceeded to legislation as far as I know.

**Mr Grandmaître:** It was the committee on regulations and private bills. I was passing a private member's bill and I was told that the ministry would be passing such legislation very shortly. I don't know if the parliamentary assistant remembers this.

**The Chair:** We don't know.

**Mr Grandmaître:** We don't know.

**The Chair:** Anyway, your next point. What's the follow-up to that point?

**Mr Grandmaître:** There is no follow-up. I just wanted to tell him the good news that the provincial government was going to do something good, and now it's pending.

**Mr McNair:** Actually, our environmental advisory committee suggested several years ago, when the city was in the midst of a long and drawn out review of its official plan, that it would be nice if we could have policies on our official plan which said, "Hey, if somebody comes in and does this kind of rape and pillage attack on the thing"—I've worked in this business for almost 25 years now, worked for lots of developers.

The vast majority of the developers I've run into are reasonably responsible people. But I have seen some who are not and I don't think too much of the ones who go in and clear-cut and rape and pillage existing sites before they've got their approvals in place. We were hoping to see provisions put into the city's official plan, if it could be done, which would allow the city, if somebody went and pulled a stunt like that, to say: "Okay, for 10 years or 20 years or whatever, maybe there isn't going to be any development on that site. Maybe what will happen as a result of this is that you're going to have to replant the thing and you're going to have to maintain it until those trees have got back to the size of the ones you cut down. Alternatively, if you want to do it faster, you're going to have to plant much bigger trees."

That's the kind of problem you run into. When we discussed that with the city solicitor, he said, as a policy approach, you could always taken a run at it. He wasn't sure whether you'd be able to legally support that. Certainly, the Trees Act itself doesn't provide sufficient power to do that. Had Mr Sewell's recommendations been taken into Bill 163 and the trees been included in this, it's still permissive in terms of allowing municipalities to do it, and I don't know if you could have gone that far. But it's something to chew on a little bit for the members of the committee because what you're talking about here is hard, cold cash. You're talking about an economic disincentive to keep somebody from doing

something which most of us would agree is a bit stupid out of spite of whatever.

Unfortunately, when the landscape and the vegetation get destroyed, then they come back and say, "Well, it was an environmental designation before, but there's nothing left there now." Usually, this isn't the owner who did it. He sells it off to somebody else and they come in and say: "Well, hey, I just bought the thing, but there's no wetland there. There's no woodlot there, so why can't you change the designation on it? It just makes sense, doesn't it? Because now it's just a bare piece of ground."

That's like bulldozing Mr McLean's son's dairy farm and then saying: "Well, it's not good agricultural land any longer. I guess we ought to turn it into something else." I don't think that makes a lot of sense.

**Mr Murdoch:** Thank you very much for your presentation. A couple of things: I notice Ms Harrington mentioned that there were a lot of municipalities and just some had problems with "shall be consistent with." I haven't heard of any yet that haven't had a problem with that, so I want to put that on the record.

I think most of the municipalities have a problem with that statement. They would have sooner seen the words "have regard to" and left it a bit more flexible. So I haven't heard any municipalities agree with the changing. There may be some that I hadn't heard other than today, but there haven't been any today.

**Mr McNair:** It is a bit more flexible, and I guess the trouble with the flexibility of "have regard to" is that some municipalities have driven a very large Mack truck through it and that's part of the problem.

1530

**Mr Murdoch:** The other one: I noticed that you're not too impressed with septic tanks. Do you have an alternative? What would we do in rural Ontario?

**Mr McNair:** No, I didn't say I wasn't impressed with septic tanks. There are problems with them that we haven't begun to acknowledge, but I think they can work effectively in certain limited—and when I say "isolated," I don't mean in Wawa. I mean isolated in terms of the impact it has on the groundwater.

The problem is that when we approve septic tanks now, Mr Murdoch, as you're probably aware, we don't look at a lot of the groundwater quality concerns. If it's on a one-lot basis, we simply look at it and say, "Is it the right sized tank for the right sized house, given the number of bedrooms and fixtures they're going to have in the thing, and is the soil reasonable so that the effluent from the tank won't pond on the surface, so that we won't have a public health problem?"

When we look at them on a one-off basis, we don't look at nutrient problems, groundwater, and we certainly don't look at any of the more exotic chemicals. Many of the people who live in the rural environment are just as keen on using the drain cleaners and everything else as the people who live in the cities are. I shudder to think what they may be doing to some of our municipal sewage treatment plants too, because they're not all up to where they ought to be, but that's another argument.

**Mr Murdoch:** But how would we address that?



What's the alternative for, say, multiple dwellings in rural Ontario on land that's not suitable for agriculture? We need a policy then.

**Mr McNair:** Under the present regime, there's nothing that stops an individual severance from going through just as rigorous a process as a plan of subdivision, which could include hydrogeology reports and studies of groundwater, pollution from nutrients and things like that, questions if there's any potential source of some sort of toxic contaminant leaking in somewhere nearby that could affect their groundwater.

If you're going to have development done through severances, through a land division committee or a committee of adjustment, they can take every step. The legislation at present permits them to put every kind of requirement and regulation on that the minister could put on a plan of subdivision, so they could be just as thorough about it as the minister is with a subdivision plan. Unfortunately, in almost any case I've ever seen, they're not and they don't. So the level of assessment and screening that could be done under the present legislation simply isn't followed on those severances.

**Mr Murdoch:** I understand that, but if you're doing a subdivision, it would pay to do that because you're going to have a number of severances or a number of dwellings in the subdivision, so you can afford to do the studies that you're talking about. But if you're doing two, maybe three severances, the cost of that would make them—

**Mr McNair:** Well, yes, but if those lots are worth \$30,000 or \$40,000 or \$50,000 apiece and you've got two or three of them—

**Mr Murdoch:** But you don't get that in rural Ontario.

**Mr McNair:** It depends where you are in rural Ontario.

**Mr Murdoch:** That's what I mean then, okay.

**Mr McNair:** Right now, maybe not. In 1988 or 1989, a rural lot, not on a lake—

**Mr Murdoch:** On a lake, now that's different.

**Mr McNair:** —not on the waterfront, in Simcoe county or, I suppose, in Grey county could have had a value of \$50,000 to \$100,000.

**Mr Murdoch:** On a lake, but not back in the backwoods somewhere.

**Mr McNair:** No, I'm talking more about the lots. The real question is, if you're going to have development, development should pay the cost of making sure that it doesn't create a problem. That's how I would assess it.

**Mr McLean:** Can I have the last question?

**The Chair:** If the answer is very long, it'll take—all right.

**Mr McLean:** In 1.3 you talk about "the purpose right to the mandatory plan content regulations." Were you looking for some regulations in this legislation so that we could have known what was in them?

**Mr McNair:** No. The reference there is just that the principle of ecosystem planning should carry right through the whole thing. Unfortunately, we don't have any of the plan content information. That's all going to

come in regulations. As Barbara mentioned in her submission, she really thinks, and I support that position, that it should be in the legislation. You, the Legislature, pass it and tell us what's going to be in the thing.

But that point is that the ecosystem planning principle should be carried right through in the plan content requirements. If they're in the act, then we know whether that's been done or not, and if they're in the regulations, we have to hope.

**The Chair:** Mr McNair, we've run out of time. Thank you very much for the presentation you made. It was very informative, but as usual, there's never enough time.

**Mr McNair:** I appreciate very much you and the other members of the Legislature taking the time to have the hearings. I know it's a busy schedule and you've got a long roadshow ahead of you, so we'll let the next batter come up to the plate.

#### TOWN OF CALEDON

**The Chair:** We invite the town of Caledon. Welcome, Ms Konefat and Mr Russell.

**Ms Heather Konefat:** On behalf of the town of Caledon, I would like to thank you all for giving us both the opportunity to speak with you today. Peter and myself will only be dealing today with the planning initiatives with respect to the Comprehensive Set of Policy Statements and with Bill 163.

The town of Caledon has been actively involved in all public stages of the preplanning work leading to the current comprehensive policy statements and Bill 163. I personally have been involved as a member of the AMO planning task force on planning reform and as a member of the GTA mayor's planning committee. Both committees, as you may be aware, have been extensively involved in the process to date.

As an overall comment, the town of Caledon strongly supports the need to create a new environment for planning in Ontario, especially an environment that includes the recognition of an increasingly important role for municipal government. It is also clear that municipal decision-making must take place, under the positive leadership of the province, through clear policy and processes established by the new policy statements and Bill 163 itself.

With respect to the policy statements, we at the town were unaware that the comprehensive policy statements continued to be under discussion. The town has therefore not provided detailed comments on the statements. We are, however, very concerned that the various ministries, we understand, are proposing changes to the standing committee. As you may be aware, extensive work and discussions have been conducted collectively by many agencies and interest groups, including the town of Caledon, the GTA mayor's committee and the Association of Municipalities of Ontario. These efforts could be seriously eroded if at this late date fairly extensive changes are made to these policy statements based on various ministry staff direction.

The primary concerns relate to two matters:

(1) The general public is not aware of the changes that are being proposed. There's been no opportunity to comment and no opportunity to debate.

(2) We feel that the policy statements are already encumbered with a considerable amount of detail, and any changes proposed will likely add to that policy detail. There is concern that this increased policy detail will undermine the broad intent of the policy statements and will promote provincial-municipal entanglement and subsequent delays and costs. This will also not empower municipal governments to get on with planning in their communities. We collectively have worked too hard in the past several years for this to happen.

As you are aware, and I heard it earlier this afternoon, there's been much debate on the conformity requirements with respect to the policy statements. We are also very concerned with the use of the word "compliance," combined with the extensive and detailed wording of many of the policy statements. We feel this will severely restrict the diverse Ontario municipal governments from making logical and appropriate decisions at the community level. We would encourage the committee to consider wording that would better enhance what we think is the leadership value of the policy statements. Wording such as "consistent with the intent" or "consistent with the policy direction" should be considered.

We are also very concerned with the voluntary aspect of local official plans. This implies that local planning is a less important component in the planning process, when in fact we feel it is one of the most critical. The development and implementation of a local official plan is a primary planning tool because it promotes municipal council accountability, political and public education and develops community dialogue and debate on fundamental community planning issues.

We recognize that there was a concern that remote local municipalities in the province may not have the resources to prepare an official plan. However, local municipalities in the GTA, such as Mississauga and Caledon, have extensive professional resources and a commitment to official plan planning. The provision that they only "may" do an official plan serves to undermine and denigrate the commitment those municipalities have made to their communities.

In addition, we must consider the tremendous size of regions in the GTA and their remoteness from the individual and the community as a need to strengthen local official plan planning in the GTA.

We would ask you, as there are other exceptions provided for in the bill, to enhance the empowerment of local municipalities, and in particular in the GTA, by directing that they must prepare an overall official plan for their municipality.

1540

With respect to the contents of the official plan and zoning bylaw, we strongly support the provisions in the new bill. They provide us with essential support in many areas of planning for the community. In particular, the zoning bylaw provisions for sensitive aquifers and groundwater recharge area protection provide us with new and progressive planning tools.

We also strongly support the opportunity of moving towards a development permit system. Zoning bylaws, as

you're probably all aware, have fairly significant limitations due to their inflexibility, hence the need for committees of adjustment. The move towards such a development control system in Ontario will promote a less antiquated form of regulation.

Thank you for your time. I would like now to introduce Peter Russell, a planner with the town, who will deal with the more detailed regulatory processes of the bill.

**Mr Peter Russell:** Apparently, in the interest of streamlining and empowering local decision-makers, Bill 163 proposes to eliminate appeal rights to the Ontario Municipal Board for minor variance decisions. Under the new act, the decisions of council or a delegated committee of adjustment are final. Local councils may opt for a system wherein a review of the committee's decision is conducted. However, no appeal rights are provided.

Minor variance applications have often proven to be the most contentious of planning approvals as neighbours are often pitted against each other. Since committees of adjustment are appointed by councils, the members are not immune to political pressures which may arise. Despite these conflicts, the public has always been provided the opportunity for a full impartial hearing before the OMB, if necessary.

The OMB itself has indicated that minor variance appeals account for only 18% of actual board files and less than 6% of hearing time. With the introduction of alternative dispute resolution methods and case management procedures, it is anticipated that this system will only become more efficient.

The system proposed by Bill 163 would require local councils, the legislative bodies that enact zoning bylaws, to play the role of the judiciary in the event of a minor variance review. In addition to requiring elected bodies that must respond to political pressures, a judicial function, Bill 163 also provides for the review to be exempt from the Statutory Powers Procedure Act, which stipulates the requirements for fair hearings.

Ministry of Municipal Affairs staff have responded to these concerns by stating that proponents unhappy with local decisions on a variance can simply apply for a re-zoning and avail themselves of the appeal rights provided through that process. As a result, the more costly and time-consuming zoning appeals to the Ontario Municipal Board would likely increase, potentially precluding the initial objectives of streamlining the process. In addition, the zoning appeal route would be impractical for opponents of approved variances as building permits may be available to proponents.

With respect to subdivision approvals, the bill provides some benefit to municipalities in that the approval authority can provide for the lapsing of draft approvals with a minimum time frame of two years. As a result, subdividers not proceeding to registration can lose draft-approved status, thereby freeing infrastructure capacity for other developments and allowing reconsideration of the initial approved plan. The bill does not, however, provide for delegation of the subdivision approval authority to local municipalities, an omission that would seem contradictory to the notion of empowering local



government. As in the case of many legislative changes, action taken in the interest of specific goals may have unforeseen consequences which in some cases result in a reverse effect. In this regard, Bill 163 contains a number of provisions relating to processing procedures and time frames for dealing with various applications in addition to notice requirements.

Of particular concern is a proposed 15-day time frame within which the municipal clerk must complete notice of passing for all official plan amendments, plans of subdivision and consent applications. In addition to persons within a specific geographic distance, notice must be provided to all individuals who made written or oral submissions regarding the proposal. In most instances, preparing notice of passing requires intensive effort to formulate mailing lists, prepare newspaper advertisements, assimilate documentation etc.

To require notice to be prepared within the 15-day time period is fairly onerous to begin with. However, when coupled with practical realities such as staff constraints, vacations, major holidays and election periods, it would seem completely inappropriate. The reality is that rather than speed the planning process, such a requirement will in fact lead to further delay as reports and approvals are deferred in order to ensure sufficient staff time to prepare the notice of passing.

Bill 163 represents a package of comprehensive amendments to the Planning Act. Many of the proposed changes to the act are perceived to be positive steps towards planning reform in the province. As reflected by the concerns raised, however, not all of the proposed legislation is perceived in a positive manner.

I think we'd be pleased to entertain questions at this time.

**The Chair:** Thank you. Mr Eddy, is it?

**Mr Eddy:** Yes, my name's Eddy. Thank you very much for your presentation. I must say—

**The Chair:** Mr Eddy, I know your name. I was just wondering whether it was going to be Mr Grandmaître or somebody else.

**Mr Eddy:** We do tend to be confusing at times.

Thank you for your presentation. It's very important. I do agree with you and I hope there would be others who agree. I definitely agree that official plans should be required at the local level; they should be optional between a land use plan and a policy plan at the upper tier.

Peel is one of the two regions in Ontario, the other being York, that don't have official land use plans and will be required to, so it's going to make a change in your situation and probably produce some conflict. I understand maybe a Peel official plan is under way now.

**Ms Konefat:** Yes.

**Mr Eddy:** Peel and York have been the two fastest-growing upper-tier municipalities in all of Ontario and they seem to have survived without an upper-tier official plan. Amazing. Do you think the local municipality will have much input into the official plan or do you see a lot of things being imposed on you because the regional official plan as well, of course, is the provincial policies?

**Ms Konefat:** That's a very tall order. I guess first of all I should establish that I am a proponent of regional planning.

**Mr Eddy:** Mandatory?

**Ms Konefat:** I do think regional planning should be mandatory.

**Mr Eddy:** Land use plans?

**Ms Konefat:** I would hesitate to say it would have to be a land use plan, but a strategic document must be prepared at a regional level—there's absolutely no question about that—to deal with many of the major issues, particularly, that we're dealing with in the GTA. Where I have difficulty with the large municipalities is at the local level within the GTA, places such as Mississauga, which are communities of communities. We're suggesting to them that their role is very substantially reduced to a provision of "may plan," and I think that is not progressive in the context of this particular bill.

**Mr Grandmaître:** The fact that minor variances cannot be appealed to the OMB under this legislation, would you like to see a different composition of committees of adjustment?

**Mr Russell:** We've talked about perhaps coming up with different alternatives, different dispute resolution alternatives in place of the minor variance appeal rights. The bottom line is that we feel that the OMB functions efficiently and effectively in its current role and therefore we haven't prepared an alternative to what's being proposed in the bill other than what currently exists procedurally. We believe that the provision of a fair and impartial review through the OMB is the best route. It represents a distinction between the judiciary and the Legislature, which I think is important at all levels of government.

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**Mr Grandmaître:** So you're satisfied with the present system, that they can be appealed to the OMB.

**Mr Russell:** "Satisfaction" is a strong word, sir. As I indicated, the board itself—

**Mr Grandmaître:** I've succeeded; I've succeeded.

**Mr Russell:** The board itself is aware of the obvious difficulties it faces in case management. They have embarked upon several different alternative dispute resolution mechanisms and a case management portfolio that we feel will address the concerns they presently have in terms of delays before the board and that sort of thing.

Many of the variance issues that we deal with at the town at the present time are disposed of through pre-hearing conferences and mediation and things such as that. The significance is that the decision to dispose of an issue without a hearing is made by a fair and impartial body as opposed to a politically appointed body or a politically elected body.

**Mr Grandmaître:** So I won't succeed in making you say that the OMB is doing a good job and it should stay in place, right?

**Mr Russell:** I would certainly say that yes, the board is doing a good job. You would never find me as an individual who would support doing away with the board.

**The Chair:** He's still probing, Mr Russell.

**Mr Grandmaître:** This is amazing, you know? This is the first time in the last 10 days I've heard municipalities saying that. I remember when I was the Minister of Municipal Affairs, every mayor in this province was saying, "Abolish the OMB."

**Mr Eddy:** That's because they wouldn't file an official plan.

**Mr Grandmaître:** Okay, so the OMB is doing a good job.

**Mr Hayes:** They had no policy at that time.

**Mr Grandmaître:** Thanks, Pat.

**Mr McLean:** So what you're saying then is that you want the OMB still to be in place for minor variances.

**Mr Russell:** That's correct.

**Mr McLean:** Thank you.

Madam, you had indicated in your brief that the local planning is less important than the planning process, when in fact it's one of the most critical. Are you saying that all local municipalities should have a plan?

**Ms Konefat:** I've given this a great deal of thought. I know for example in the comprehensive policy statements there are some threshold numbers that are put in. For example, 10,000 is a number that is put into that document. That might be one vehicle by which to omit the very small local municipalities in the more remote parts of Ontario from this type of planning.

But I would suggest that if we really want to do good planning in our communities, we have to get our local councils and our local communities to buy into the concept of planning for their community for 20 or 30 years. I think we do a great disservice to these communities when we have large, remote regions doing that planning for them and forcing it down to that community level.

**Mr McLean:** We all realize that you are a planner and you would of course promote planning in the province, but do you think there is a need for an upper tier and a lower tier to be planned? All municipalities put on a plan and then the county goes and puts on a plan. Their plan at the local municipality has got to coincide more or less with the upper tier because the upper tier's the one they're going to take their orders from. What is the point in doing all this local planning if you've got one overall plan for the county?

**Ms Konefat:** Largely, the way I envision upper-tier planning would be a strategic type of planning where you provide the broad umbrella for how you're going to plan for the next 30 or 40 years in your community. When I'm talking about community, I'm talking about huge communities. Local plans at a local municipal level are much more detailed documents with the emphasis on land use. In other words, it's an implementation tool for the upper-tier plan much the same way as an official plan is an implementation tool for a zoning bylaw.

**Mr McLean:** You make your points well. But there is a great cost to doing that, isn't there? Before you, we had some people who said that in Haliburton, neither the one municipality nor the county could afford to put on an

official plan. In essence, you're creating a burden on a lot of municipalities that can't afford it.

**Ms Konefat:** I guess I'm very optimistic. I think if it's done properly and done cooperatively, it can run very smoothly.

**Mr McLean:** I was always of the great belief that the local municipalities are the ones that should be doing the planning. But what it's come to now in Bill 163, they're not the ones that are going to be able to make any decisions. It's going to be the upper tiers now that have got to make the decisions. They're the ones that are going to get planning authority and the authority to approve subdivisions.

**Ms Konefat:** My real difficulty here is I think somehow the planning process has to be accountable. Largely the accountable people that I see in my day-to-day workings, and I've worked both at a regional level and at a local level, are the local council. They are the people who first hand receive the complaints, the grievances, the difficulties in the community. Generally speaking, people are very intimidated by moving into a regional type forum. That's why I think, to promote accountability, local municipal councils have to do long-term community planning.

**Mr McLean:** I agree with you. Unfortunately, the upper tier now is the one that's going to be doing the planning. That's where the approvals are going to come from and that's where the cost is going to be.

The other question I had was with regard to—

**The Chair:** The last one.

**Mr McLean:** Oh, the last one?

**The Chair:** Yes.

**Mr McLean:** I was going to ask one of the ministry, but Mr Hayes looks pretty comfortable, so I think I'll defer that one.

The Statutory Powers Procedure Act, which stipulates requirements for fair hearings, you are looking at a review to be exempt from this, is that correct?

**Mr Russell:** As we understand Bill 163, in the process of a review of a minor variance decision, the council is exempt from the Statutory Powers Procedure Act. Our understanding of that is that the Statutory Powers Procedure Act is the legislative act that stipulates the specific requirements for a fair hearing. Essentially, it's the fair hearing requirements that have been established by common law. Our concern is that to exempt the council review of a variance decision from those requirements, the proponent of a minor variance application would not be required to be at the review. The review could be held without notice on the whim of council essentially, without either the appellant or the proponent present. It does not seem to be a particularly fair method of dealing with a variance issue.

**Mr McLean:** Thank you for coming and making your presentations. They were great.

**Mr Wessenger:** Thank you very much for your presentation. I just need some elaboration on some of your comments with respect to development permit systems that you indicate you're in favour of because of



their flexibility. I must say I have some sympathy towards that position, but are you saying that Bill 163 advances the opportunity of having a development permit system, and if so, how does it do that?

**Ms Konefat:** I guess largely because it makes the opportunity there from a legislative framework. I know the guidelines are currently under preparation and I look forward with interest to see what those will say.

My experience in development control comes from Alberta. I worked in Alberta as a planner for nine years and I have seen the good things that development control can do. What we did in Alberta, so that you have some background on it, is that zoning bylaws were largely left to very small villages that were way out in the wilderness, largely because we knew those villages were not going to change. We used development control as a tool where we had a much more dynamic situation. It allowed us to more realistically translate the objectives and the policies from an official plan document into a regulatory tool that we would use then for approving development.

**Mr Wessinger:** Do you feel the act does permit municipalities to move towards that?

**Ms Konefat:** I think it does. It will when the guidelines come out and larger municipalities will evolve towards that. I think we're developing, to use an overused word in the year 1994, a new paradigm in planning in respect to zoning and development control. We're moving forward to a new system and I think it's about time.

**Mr White:** Thank you very much for your presentation. I'd be pleased if you take back my greetings to your mayor, whom I know from the GTA mayors' meetings.

There are a number of things in your presentation I was interested in, the issue of the different strategies at different levels for planning. Of course planning isn't something one puts on like a new suit but rather something which is integral to the whole development process.

I was wondering if we could take a look at this issue that you bring up in regard to the minor variance. It's a thorny issue. It's been discussed earlier this afternoon. When you say the OMB had indicated that minor variance appeals account for about 20%, about a fifth, of their board files and 5% or 6% of the hearing time, that's still a significant amount for a body as central as that with the backlog that body has.

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I'm wondering if you would suggest that there might be an alternative means of resolving some of those things. Obviously, one thing that is clear is the question of whether something is a minor variance or not, is appealable to the OMB. But we were also hearing recently about alternative dispute resolution methodologies and whether or not that might not be a good means of clearing some of that backlog before it got to the OMB, particularly with the minor variance issues, where the cost of a hearing might be quite burdensome for the parties involved.

**Mr Russell:** One of the very positive aspects of the bill with respect to zoning approvals and official plan approvals and the like is that the bill does provide some very strong direction towards the board in dealing with

appeals and methods for determining whether or not appeals or objections are reasonable. They've expanded upon the old frivolous and vexatious clause and there is some specific terminology within the bill that would provide the board with some clearer power in terms of dismissing and dealing with appeals in a short term. So we're very supportive of those steps and we feel those steps certainly could be applied to appeals on minor variances as well.

We also support the board in its efforts with alternative dispute resolution. The board's experimenting with many different methods for disposing of hearings in a relative short time. For instance, they are holding hearings by conference call, which, for obvious reasons, saves time because the member does not actually have to transport himself to the local municipality. They're holding hearings based on regional centres, so they'll send a certain number of board members to a specific geographic location and everybody with a hearing to be held within that area goes to that centre.

From what I understand from staff at the board, they've been very successful with these methods. We feel, given the relatively insignificant amount of time that variance appeals consume at the board at the present time, combined with those methods, it should alleviate the difficulties that the board is having.

**Mr White:** But do you think that would preclude other methods of resolving those disputes?

**Mr Russell:** As I indicated earlier, we did not bring an alternative to present to the committee today. Our concern is simply that whatever method is in place should maintain the distinction between the judicial body and a political body, a legislative body. The method proposed in the act does not provide for that distinction. Committees of adjustment are appointed by council and council themselves obviously are elected by the public.

**The Chair:** We thank you both for coming and thank you for sharing your views with this committee.

**Mr Hayes:** I want to make a clarification, if I may, not just for this delegation, but thank you very much for your presentation. I thought it was very good. The one part about the policies, of course, cabinet has already approved the policies, and yet we have an implementation advisory task force that is working on the guidelines and the regulations which will be ready at the time of the legislation. As far as the policies and this committee are concerned, this committee does not have the mandate to deal with those policies. I hope you understand that and I hope that cleared things up a little bit.

**Ms Konefat:** We are relieved to hear that because we had heard through Ministry of Natural Resources staff in fact we're going in for another run and we were not looking forward to that. We'd hope it was resolved. Thank you very much.

GREY ASSOCIATION FOR BETTER PLANNING

**The Chair:** We invite Grey Association for Better Planning, Mr Peter Ferguson.

**Mr Peter Ferguson:** Good afternoon, ladies and gentlemen. Thanks for the opportunity to be here to be talking about this issue once again. I recall a time not too

long ago, Mr Marchese, when you were my trustee in the city of Toronto, and it's a pleasure to encounter you again now that we've both moved on, you to the Legislature and me to Grey county. I'm pleased also to see that my local MPP is able to sit on your committee.

You have, I believe, copies of our presentation and the executive summary. I'm hopeful that you've all read it and I'm not going to walk you through it again. I'm just going to try and hit the primary points so that we can get into discussion as quickly as possible, if need be.

The Grey Association for Better Planning coalesced about five years ago when we found that planning in our county was not being pursued as it might've been. We've been intent on trying to improve the situation in that location, and we think that the problems in Grey and our work on them gave rise in part to the Sewell commission. We've been very impressed with the work of the Sewell commission, and we find ourselves now at a point where all of that good work runs the risk of possibly not having the effect that it ought to have.

Our primary concern, and I'm sure you've heard much discussion about it, is the issue of whether municipal planning should comply with provincial policies or whether it shall simply have regard to them, as the act currently reads. We're very concerned that the act at present has, in effect, no effect, that any municipality may at any time say: "Yes, we have regard to the policies. We didn't like them. We looked at them and we ignored them," or "We looked at them and we considered them and, no, we don't agree with them, and we'll do whatever we like." It's that kind of attitude that we found in Grey county and continues to this day.

We think it's incumbent on you people, as the representatives of the body which creates and directs the municipalities, to direct the municipalities to comply with your legislation and to not create a piece of legislation that can be chucked out. So we're hopeful that you will look at the policies and ensure that the wording is changed so that all lower-tier governments must comply with your policy directives.

We also note that the policy statements are not at present anticipated as governing other provincial ministries and agencies, which the Sewell commission recommended. One of the problems which we understood the commission was gathered together to address was the fact that there are conflicting directives among all the ministries, and we expect coordination among all of the ministries and we expect each ministry to issue directives which will, within the purview of its own area of concern, require the complying action on other bodies of the provincial government.

We note that the Sewell commission's recommendation that amendments be put over for later planning has been rejected. I'm on the second half of part (2) of the executive summary. Where Bill 163 allows referrals and appeals to be rejected without hearings, proponents as well as opponents should be required to base their claims on the purposes and provisions of the plan or the act or on clear public benefit. At the moment, the bill says that objections must be based on land use planning grounds. We find that again is, in essence, a weasel clause. If

we're going to be establishing a piece of legislation which sets planning requirements, let's say in the act that objections or proposals must be based on the act and not on some undefined land use planning grounds.

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As to the purpose of the act, moving on to number (3), this is perhaps a niggling point of syntax, but the act at present reads that the purpose of the act is "to promote sustainable economic development in a healthy natural environment" thereby presuming, in effect, that there is a healthy natural environment and that all we're concerned about is promoting sustainable economic development in it. Whereas, we believe that the purpose should read "to promote sustainable economic development and a healthy natural environment," to be quite explicit that the act is directed towards maintaining that natural environment and that the natural environment isn't maintained through the grace of God. Purposes (a) and (b) of the Sewell commission should also be included. We believe they do an even better job of explaining the purpose of the act.

Moving on to number (4), we find that intervenor funding, which was proposed to be included has not been, and I think many of you will understand that in the discussion of these issues, very often there's a great weight of money on one side and very little time and money on the other. We thought it was a good proposal. It's been used in other jurisdictions. I'm not sure about whether it's used in other legislation of your government, but it ought to be maintained.

Number (5), Bill 163 should make five-year reviews mandatory and set deadlines for bringing lower-tier plans into conformity with both upper-tier plans and the NEC. We've had, as I'm sure you're aware, numerous difficulties with the NEC being different from our plan. We're only now in the process of writing an official plan which will ensure coordination between the two. I think it has been 20 years since we've had a new plan and we were looking forward to getting a good new plan earlier than that, and we think this act should be trying to do that for everyone.

As a sort of citizen group, we think it's important that you maintain the Sewell commission's recommendation that a right to full information about any proposed project be maintained. I can understand arguments against all the other points. I really do not know why there should be any question about this one. Again, we should make the right of appeal open to all citizens regardless of prior participation in the planning process, which seems again to be a fundamental quality of democracy that I hope we're all working towards.

Under point (7), we have a whole list of recommendations. I won't ask you to read them all right now because you're probably familiar with most of them, but again, viewing the Ontario government as setting the standards and requiring the standards for the operation of municipalities, we think it's important that 32, 35 and 45, which deal with the content of a plan, be included in this legislation, and that 46, 47 and 48, which deal with the process of planning, be included, because if we don't stipulate what constitutes a plan in the way of content in



this province, and what constitutes a valid process—and we're just now having a bun fight in Grey county over whether we have a public participation process or not. At present our councillors—I believe some of them are here today—are able to say that they are complying with provincial requirements for public participation because those requirements are so fuzzy and so minimal.

So please, I would urge you to ensure that every plan and every process of planning in this province meet minimum standards. While we're in favour of devolution of responsibility, the province must set minimum requirements.

Recommendation 50 I think is a kind of conceptual concern, which is that planning be done on a watershed basis. At the moment, we have boundaries among our various municipalities which make no geographic sense, and it's as a concept—water being our most—except for air—movable resource, we must begin to coordinate on that issue. We would hope that the province will take the leadership in that.

Site alterations: So often the natural environment or existing built environment gets altered prior to approvals. That would be a simple time and a pivotal time to call an end to that.

Registry and rural notification should both be taken up, and septic systems—we being in a rural jurisdiction, septic systems are an increasing problem and I think we're reaching critical mass in the development of certainly south central Ontario where, yes, in the past we could just blow whatever we wanted out into the ground and it would disappear. It's not the case any more. We're now drawing water off and selling it to the US—a lot in our county. A lot of us have to drink the dregs and we'd like to make sure that this legislation goes as far as possible to making sure that those are healthy.

Those are the main points. I'm afraid there's an awful number of them but, in essence, our desire is that this committee go back to the Legislature and ensure that the strength of the Sewell commission's work not be dissipated and that all the time and money we've all put into this not result in a document which is essentially ignorable.

Going back to point (1), if we don't say it right, then anybody could just ignore it. Questions?

**The Chair:** There are some. Mr McLean to begin, four minutes.

**Mr McLean:** I see that: "The Grey Association for Better Planning is not opposed to economic development. With population growth, development is essential. It is therefore an appropriate goal of a Planning and Development Act. But the necessity for maintaining a sustainable natural environment is equally essential." This is what your association is saying, right?

**Mr Ferguson:** Yes.

**Mr McLean:** And you were also, just a few minutes ago, saying that septic systems were something that shouldn't be allowed.

**Mr Ferguson:** No, I'm sorry.

**Mr McLean:** How were you—?

**Mr Ferguson:** I think you misunderstood.

**Mr McLean:** I probably did.

**Mr Ferguson:** Perhaps I misspoke myself. What we're saying is that septic systems must be regulated and maintained as suggested by the Sewell commission.

**Mr McLean:** Yes. You just skimmed over this so I didn't get a chance to fully read it all.

**Mr Ferguson:** It's a rather dense document and I had been hopeful that most people would have received it earlier and been able to extract the main thrusts of it. I was trying to do it verbally so we could cut to the chase.

**Mr McLean:** Sewell is not very happy, you know. He was at AMO last week and wasn't overly enthused that a lot of his recommendations were left out of this plan.

**Mr Ferguson:** I'm not surprised by that.

**Mr McLean:** And there are others beside you who appear to be saying the same thing.

**Mr Ferguson:** I would hope so.

**Mr McLean:** I'm curious of what's going to happen with regard to some of the recommendations though. I think the ministry people have said that most of Sewell's recommendations were taken into consideration, but taken into consideration and being part of it, I guess, is a different story, isn't it?

**Mr Ferguson:** That's what every municipality is going to be saying if this act stays the way it is, "Well, we took it into consideration, but we didn't do it."

**Mr McLean:** I'd like to ask you the question with regard to planning. We're having some trouble with this: lower tier and upper tier. Do you believe there should be two-tier planning, both at the local level and at the county level?

**Mr Ferguson:** I think they're both worthwhile. Again, harking back to the comments we made on watershed planning, I think planning is an activity which has to happen at a variety of scales and I think we're only now coming to an appreciation of how the upper tier and lower tier interact. We have enough work done at both tiers historically that we can now begin to say on what issues and to what detail upper tier should be dealing, and then leaving the rest to the lower tier.

As the previous speaker said, I think it's important that we do have local planning being done by local people, but within the bounds of regulations set in the first place by the province; secondly, by the upper-tier government; and thirdly, by the lower tier. It's a matter of negotiation among the upper- and lower-tier governments, but I think for now, in most jurisdictions, it's the way to do it, yes.

**Mr McLean:** Thank you for coming today. We appreciate it.

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**Ms Harrington:** Thank you for coming down here from Grey county. You've given a very thoughtful presentation with regard to citizens' involvement, and I note particularly the citizen right to full information about the proposed project at the beginning. I'd like to reinforce that I believe it's very important. Your request for intervenor funding is also very important to enable people to have their say.

These are things that we heard about last week as well, the sustainable economic development in a healthy natural environment. We heard an excellent presentation last week about this as well, that we do have to think about the environment when we are looking at development.

You did say that the very most important aspect was your number one, which is compliance with policy statements, and that you feel this is very important. Am I reading you right?

**Mr Ferguson:** Yes.

**Ms Harrington:** Okay. I'm wondering if you might speculate for me as to why there is a divergence in the people coming before us. Many of them are taking your point of view and saying that, "Yes, we must have strong and clear principles on which planning decisions are made in this province," and the other portion is saying, "You're taking away the rights of municipalities." They seem to be falling into two clear camps.

**Mr Ferguson:** Yes. I think that happens all over the province.

**Ms Harrington:** Would you speculate as to why this is?

**Mr Ferguson:** To me, it comes down to a philosophy of democracy. If we view coming together in legislatures to set the rules to which we all must hew, then on the one side—the side on which I find myself—we have to go through a process of determining what those rules are, setting them, making them strong and clear and having everyone live by them. I think that's difficult for the other side—if I can put it that way—to understand that there should be anybody who takes authority away from them. I view the proper process as being one of giving over authority to the greater whole in which we determine the rules and then living by them.

Having moved up to Grey county, one of the reasons I moved to Grey county from Toronto was that I rather liked the get-off-my-back attitude of many people up there. It's a pioneer place. It still is, and it's self-sufficient. When one has a history of being self-sufficient, one doesn't like to be told from Toronto what to do. The only way to move beyond that kind of perception is to realize that we're all in this together. We're all coming together, in large or small groups, to define the rules by which we will all live and we're all agreeing to them. It's not as though there is some government out there telling us what to do. The government is of the people; it is the people and we come to agreements and then we must live by them.

The difference, to me, comes down to one of lack of perception and lack of willingness to work together with—that is, on the side of those who don't wish to have provincial rules—one's neighbours.

**Ms Harrington:** Thank you.

**The Chair:** Mr White, only one question, because we're running out of time. Sorry.

**Mr White:** Could I start now?

**Mr Gary Wilson (Kingston and The Islands):** There it goes. There's his question.

**Mr Winninger:** That's it, Drummond, you were never better.

**Mr White:** Thank you, Mr Ferguson. I'd like to pursue the issue that my friend brought up as well. This afternoon we had a presentation from Grey county. They differ with you on a number of points. I'm sure you're not surprised to hear that.

**Mr Ferguson:** No.

**Mr White:** But the issue of compliance with provincial policy statements they differ with markedly. They basically feel that it's all right to have regard to general planning policies such as environmental, integrity and preservation of our natural heritage. One could have regard to it in the same way that you quote here that a local politician said luxury homes would enhance the open landscape, as regard to the policy statements.

I'm wondering if the divergence might have something to do with the fact that you're talking about luxury homes in this example, and that many developers have a lot of money involved with them. There may be more than a difference in regard to where the locus of control is and that kind of get-off-your-back mentality, but also might have something to do with real, genuine, hard-core cash, economic factors.

**Mr Ferguson:** I'm not sure that there's a strong relation between the circumstance you describe and the last question. It's easier to use your money the fewer regulations you have to follow, certainly, but I think, by drawing that connection, you cast most municipal politicians, who by my understanding tend to believe in fewer provincial regulations, in the role of being in the developers' pockets. I don't think I'm quite as cynical about that; perhaps I haven't been at this as long as you have or in the same way as you have, but I don't believe that's the case.

In my experience of my representatives, most of them have been very honourable people and I don't think the dollar colours their principles in most cases, and so I think I would have to say that I view the dollar concerns as being less important than the simple lack of perception of how democracy should work. Does that help at all? We might have a longer discussion about that at some other time.

**The Chair:** Later, perhaps. Thanks very much.

**Mr Eddy:** Thank you for coming forward with your presentation and giving us much to think about, I assure you.

The one thing I've noted is your concern. I think you put your finger on one of the major things wrong with the planning process in Ontario at the present time, and that's the lack of conformity with provincial guidelines, provincial policies, conformity between the upper tier and the lower tier, conformity between municipal official plans and the Niagara Escarpment plan and I guess also, in many areas, the conservation authorities.

I'd like to ask you, realizing the concern that many people have about the conflict between various levels, and agencies, the cost, do you think it would be possible to, or should it be required to, have first of all provincial policies that are going to be approved? And these are the



provincial policies. Do you think municipalities should be required to proceed to incorporate them in official plans within a certain time frame, incorporate Niagara Escarpment rules within a time frame and conservation authority concerns, with a view of possibly down the road having one hearing to deal with a piece of land rather than, at the present time—in some cases, it's three? Do you have any views on that? I noted your concern, and I share your concern, about lack of conformity in the different areas.

**Mr Ferguson:** That to me was the hopeful thing about the Sewell commission, that it was trying to come up with a coherent, cohesive, integrated set of clear, crisp rules that everybody knew which would gather together all the layers of bodies with possible regulatory interest. So do I think it's possible? Do I think it's desirable? Yes, both, and this should be the first step on the way to it. All I'm saying is, give it some teeth. Don't just throw it out in front of us and say: "Hey, here's a good idea. Take it up if you want." The reason for having the government is that after we've gone through all of this discussion, we come to a decision and the decision is that things shall be this way. That's what we're asking for.

**Mr Eddy:** And it'd certainly be an advantage to everyone to know all of the rules.

**Mr Ferguson:** Oh, yes, which is why everybody got excited, why all the developers and municipalities and everybody got together and said: "Hey, let's forget being at one another's throats for a while, let's get together and see if we can figure this thing out. Yes, we can." Sewell almost did a really good job, probably almost got it right. The problem is it's now being watered down. We lost it.

**Mr Eddy:** So we should come back and look at Sewell very realistically.

**Mr Ferguson:** Oh, definitely, yes. Everybody wants to get re-elected, but don't be afraid of taking a stand. That's why I elect people. I want people to come up with a decision and say: "We think this is best and everybody's got to live with it. We're your representatives."

**Mr Eddy:** Thank you for expressing your concern. Mr Curling had a question or two.

**Mr Curling:** I just commend you for the presentation and being honest and open. I fully agree with you that here's an opportunity to make a good Planning Act and somehow we're getting some people weaselling out of that. It's what Sewell had said.

**Mr Grandmaître:** You say that Bill 163 is not going far enough. Do you think Bill 163 should have abolished, for instance, the Niagara Escarpment Commission?

**Mr Ferguson:** Oh, in no way. No. I think the Niagara Escarpment Commission, for all its recognized faults, is a necessary body. We have an incredible place in this province. We have to work with it so that we maintain it. It is simply one of the circumstances which must be

integrated into a sensible province-wide planning process.

There may well be other places or other natural occurrences which should be given their own commissions as well. They would be integrated into this system. Planning is a very difficult business. You're always dealing with a patchwork of potentially conflicting desires and unusual places. The responsibility of each municipality has to take into account where it stands with regard to not only other municipalities, not only other governments, but other physical phenomena, of which the Niagara Escarpment is the most obvious at this point.

So good planning will take into account the Niagara Escarpment Commission and the watersheds that flow across different counties. There's this whole patchwork of things that we have to deal with. So, no. I think it's really important that we maintain some kind of continuity of consideration of the Niagara Escarpment.

**Mr Grandmaître:** So you don't agree with the government that said 15 or 20 years ago, when the Niagara Escarpment was put in place, that eventually the plan would be turned over to the—what?—27 or 29 municipalities, I forget exactly. You don't agree with that kind of a move.

**Mr Ferguson:** Well, to cast myself back then and maybe to think about it in the present too, I think it's of a large enough scale in this province and it's of an unusual enough nature in this world that we have to be planning at much more than a local scale. We have to be considering it at the scale of the beast itself. The only way to do that within the layers of governments we've got right now—the lowest level at which you can do that is provincially.

**The Chair:** Okay. Thank you. Mr Hayes, one last point of clarification.

**Mr Hayes:** Just for the benefit of the members of the committee, one of the delegations that was here this afternoon—I think the committee may have been left with the impression that no counties had the subdivision authority. Just for the benefit of the members, I'll list the counties for you: Oxford county in 1983; Huron county between 1983 and 1984; Prince Edward county, January 1994; and Victoria county, January 1994. All of these counties have very good official plans and worked very hard to implement them.

**The Chair:** Mr Ferguson, thank you for coming and thanks for participating in these hearings.

**Mr Ferguson:** Thank you. It's been an illuminating discussion for me. I hope it has for everyone else.

**The Chair:** We will leave for Oshawa at approximately 5. This committee will be adjourned until 9:15 am tomorrow in Oshawa.

*The committee adjourned at 1635.*

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**\*Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

Bisson, Gilles (Cochrane South/-Sud ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

**\*Curling, Alvin** (Scarborough North/-Nord L)

Haeck, Christel (St Catharines-Brock ND)

Harnick, Charles (Willowdale PC)

Malkowski, Gary (York East/-Est ND)

Murphy, Tim (St George-St David L)

Tilson, David (Dufferin-Peel PC)

**\*Wilson, Gary**, (Kingston and The Islands/Kingston et Les Îles ND)

**\*Winninger, David** (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Eddy, Ron (Brant-Haldimand L) for Mr Murphy

Grandmaître, Bernard (Ottawa East/-Est L) for Mr Chiarelli

Hayes, Pat (Essex-Kent ND) for Mr Malkowski

McLean, Allan K. (Simcoe East/-Est PC) for Mr Tilson

Murdoch, Bill (Grey-Owen Sound PC) for Mr Harnick

Wessinger, Paul (Simcoe Centre ND) for Ms Haeck

White, Drummond (Durham Centre ND) for Mr Bisson

### **Also taking part / Autres participants et participantes:**

Ministry of Municipal Affairs:

Hayes, Pat, parliamentary assistant to minister

Jones, Paul, manager, local government policy

McKinstry, Philip, acting director, municipal planning policy branch

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Stobo, Carolyn, research officer, Legislative Research Service



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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 7 September 1994

# Journal des débats (Hansard)

Mercredi 7 septembre 1994

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

Planning and Municipal Statute Law  
Amendment Act, 1994

Loi de 1994 modifiant des lois  
en ce qui concerne l'aménagement  
du territoire et des municipalités

Chair: Rosario Marchese  
Clerk: Donna Bryce

Président : Rosario Marchese  
Greffière : Donna Bryce

*50th anniversary*

**1944–1994**

*50<sup>e</sup> anniversaire*



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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICE

Wednesday 7 September 1994

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Mercredi 7 septembre 1994

*The committee met at 0919 in the Holiday Inn, Oshawa.*

PLANNING AND MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT DES LOIS  
EN CE QUI CONCERNE L'AMÉNAGEMENT  
DU TERRITOIRE ET DES MUNICIPALITÉS

Consideration of Bill 163, An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes related to planning and municipal matters / Projet de loi 163, Loi révisant la Loi sur la planification et l'aménagement du territoire de l'Ontario, la Loi sur les conflits d'intérêts municipaux, et modifiant la Loi sur l'aménagement du territoire et la Loi sur les municipalités et modifiant d'autres lois touchant des questions relatives à l'aménagement et aux municipalités.

**The Chair (Mr Rosario Marchese):** I'd like to recognize Mr Tom Edwards, the mayor of Whitby, who has kindly come this morning before his other meeting to greet us and say a few nice words about the town and what we're doing.

**Mr Tom Edwards:** Thank you, Mr Chairman. I appreciate the opportunity of speaking so rapidly. I do have duties and meetings taking place. I don't want to go into too much detail. A member of our local press is here who will want to know whether they were public meetings or not. Some of them won't be.

I do have some good news for you. The town of Whitby, despite the recession that we've all experienced, is doing very well. For instance, last year our building permit issue was \$109 million. Already, as of August this year, we have passed \$114 million worth of building permits, assisted to a great extent by the refurbishing of the Whitby Psychiatric Hospital. That obviously played a great role.

The town of Whitby is off and running. I have a report, which will soon become public knowledge, that has just come in in terms of industrial capacity. We had, as of the end of last year, a vacancy rate of 11% of our industrial buildings. That has now been reduced to 4%, all in small employee-employer relationships, 50 to 100 people.

Although we still have some difficulties and we don't always appreciate the efforts of the provincial government, who very often make decisions that affect us without adequate warning, essentially I say to you that we are, as a community, doing very well. We much appreci-

ate, for instance, the infrastructure program that this provincial government, all of the parties and the federal government participated in. It was very, very helpful to our community, and I'm hoping to go to the Toronto Liberal caucus in November and persuade them to come up with something new.

Mr Chairman, in terms of the job that you have, we have submitted a response. It is not an official, detailed response, it was to the draft report, and I won't burden you with going over it. You've read that report. It was issued on April 19, 1993, and I'm sure that the various departments have had a look at our views on the draft report.

The main reason I came this morning was to welcome you to this area. I know that some of you spent some time in Whitby last night and I would hope you'll look around our community. I would hope, if you do, you'll give me a call.

But particularly I wanted you to know, ladies and gentlemen, we're in the process of the final stages of an official plan and, as of 2 o'clock this afternoon, you will witness, if you can find time to drop in, an array of deputations from developers, from private citizens, from environmentally interested groups, all having at us in the process that you are about to change.

It occurred to me that you won't get many chances of this. It's at the last stages. We're not new. Everybody knows what is in line and everybody's mind is firm about some measures. If you can find any time at all, the meetings will begin at 2 o'clock, and I'll be very surprised if they end before 10 this evening.

Generally speaking, I greet you. I commend you on your interest in making this attempt to share your information with us. As a representative of the community, we welcome you to the area. If any of you can find time to drop in and witness our official plan representations, I'll be very glad to take an opportunity to have you recognized. I think it would be of value to you, if that's at all possible.

**The Chair:** Mr Edwards, we thank you for your welcome and we thank you for taking the time off your schedule to greet us in the way that you have.

ANDREW LAUER

**The Chair:** We invite Mr Andrew Lauer to come forward. You have 15 minutes for your presentation. If you want the members to ask you some questions, please leave as much time as you can. Otherwise there may not be any time for questions.

**Mr Andrew Lauer:** I wish to thank you for giving



me the opportunity to participate here today with respect to Bill 163. Legislation such as this can only do one thing municipally and that is to enhance the process. I appreciate how this legislation evolved as a result of the Commission on Planning and Development Reform in Ontario, which took two years to study many aspects of planning.

I wish to devote my presentation to two of the five items within the legislation: one, the Municipal Act and, two, the Local Government Disclosure of Interest Act, 1994. I also would like to offer a few suggestions that will augment the legislation and participation in local government here in Oshawa and the Durham region.

First with respect to the Municipal Act, opening the process of meetings further heightens the accountability of municipal councils. These changes to the Municipal Act will act as keys unlocking the shroud which has clouded the municipal scene. Councils should not be able to hide behind meetings that are considered committee of the whole or use any other means to subvert the process. Meetings should be open.

It is obvious that subsection 55(2) requiring the council and local board to "adopt a procedural bylaw for governing the calling, place and proceedings of meetings" has been put there because of councils denying open meetings. Subsection 55(3), which states that, "Except as provided, all meetings shall be open to the public", explicitly displays the need for opened proceedings. Finally, within the procedural bylaw, notice provisions for calling special meetings, agenda preparation and distribution, the allowing of delegations and general rules of order should also be established.

Citizens can appreciate that meetings require to be closed for items that are noted within subsections 55(5) and (6). Security, litigation and labour negotiations are legitimate reasons to close a meeting for discussion purposes.

It is interesting to further note that section 193 of the act was repealed with subsection (2) allowing for bylaws establishing the procedures and the giving of public notice governing the sale of real property. To put such an item in writing could only lead a reader to believe that some councils may have disposed of real property in such a way that was not of benefit to the public. Subsection (7) will put into practice the establishment and maintenance of a public register listing real property owned or leased. This will be of benefit in knowing the community's assets which are public assets.

Secondly, schedule B of the Local Government Disclosure of Interest Act states its purpose, which is "to preserve the integrity and accountability of local government decision-making." This statement provides a clear indication of the intent of the act to the public. It is time that our municipal office holders disclose any pecuniary interests they and/or their families have which may impact their performance on council. It is appropriate for members of council who appear to have a pecuniary interest to absent themselves from any meetings and subsequently provide a disclosure of interest as described within subsections 4(1) and (2).

The legislation will provide clear indications on gifts

which are received in the course of the performance of a local politician's duties. I regard the addition of gifts as an item which is long overdue. However, clause 5(2)(b), dealing with a contribution to a registered candidate, has to be modified. When the legislation offering tax credits was extended to the municipal level, it offered municipalities and boards the option of providing tax credits. As we all know, just a small handful of municipalities and boards took this option. Tax credits for municipal campaigns must be a given. This will further strengthen disclosure of donations that is already within the law, and it will open the process to ordinary citizens who may not be able to absorb making a contribution to a campaign.

Subsection (6) of the act is also long overdue. It is now necessary for the public to be made aware of the financial holdings of elected officials. The public demands the right to be made aware of what a politician may own in respect to their voting habits on council or at the board level. This clears the way as members absent themselves from meetings and provide the subsequent disclosures. Knowing a dollar value is not necessary, just knowing a politician's financial involvements have not impacted a vote on council is what this legislation is trying to resolve.

Finally, I wish to offer two other items that I hope will occur in future legislation at the municipal level that will impact Oshawa and the region of Durham.

Governments at all levels have worked hard to find the necessary savings that the taxpayer demands, while also improving upon services that they provide. In a city the size of Oshawa, the time has come that we look at streamlining our local council. We have an extremely large council of 16 members for our population size and the five councillors who serve on local council are no longer needed. Our regional councillors who also serve on the local level should be able to perform the additional duties that would be required of them as a result of reducing the size of our council.

Another improvement that the electorate is now demanding to the region of Durham is the election of our regional chair. I hope that in the near future we will be able to see legislation that will make the office of regional chair more accountable to the electorate. The existing selection of the chair by regional councillors is so far removed from me personally as an elector that it causes me to have no faith in the person holding that office.

I wish to thank the committee for having given me the opportunity to offer a few words individually as to how I perceive this legislation.

0930

**The Chair:** We'll begin with the official opposition. Mr Curling, I would remind you there isn't much time, so we'll keep it to two minutes per caucus.

**Mr Alvin Curling (Scarborough North):** I'll just ask a quick question so my colleague can get a chance. Thank you very much for your presentation. I think we were out in Chatham or somewhere where someone suggested that, in regard to conflict of interest and the disclosure of information, it should be extended beyond

the wife or husband or children and go to brothers and sisters. Do you think that disclosure of information in regard to conflict of interest should be expanded beyond that?

**Mr Lauer:** I think currently the way it exists in the proposed legislation is adequate. I think that meets the needs of what we're looking at right now.

**Mr Bernard Grandmaître (Ottawa East):** As you know, procedural bylaws are not mandatory at the municipal level, and some five or maybe six years ago, a draft bylaw was sent out to our municipalities encouraging them to have their own procedural bylaw, but most of them shied away from this procedure. Do you think it should be mandatory for our municipal governments to have procedural bylaws?

**Mr Lauer:** I think it should and certainly the legislation, I would believe, implies that that would be the case. I think people expect to see ground rules, the way the game's played, just the rules of game. I think that the electorate and the population expect that.

**Mr Grandmaître:** So it should be mandatory?

**Mr Lauer:** Yes.

**Mr Allan K. McLean (Simcoe East):** Welcome to the committee and thank you for your presentation. The regional chair has been appointed by rest of the elected regional councillors here?

**Mr Lauer:** Yes.

**Mr McLean:** In many cases, such as in Metropolitan Toronto I believe, the chair there is elected and then elected among his people and that's what we do in the county of Simcoe. The warden's elected from among the county councillors.

Do you see that changing here? Who's going to make that change? Is it going to be the government or is it going to be the region itself?

**Mr Lauer:** Certainly I don't see the region probably wanting to go ahead with that change. I think obviously the change would have to come from the provincial level. I think we're in a modern time where the electorate is also demanding that our regional chairs are selected in a more democratic fashion.

Certainly, as I said, it's very far removed and I find that to be a problem. The chair doesn't have any accountability in that kind of an appointment system. I know across the province there are various ways of selecting, whether it's a region-wide election or, as you said, with Metro, where the individual actually runs and then is selected from within the elected politicians. But at least that person is still accountable to the electorate at the end of the day.

**Mr McLean:** I'd like to get your view on one other thing and that is, there's been a lot of discussion with regard to the Manitoba conflict of interest, how they would fill out the conflict-of-interest forms, which would be put in an envelope and held in the clerk's office. Nobody would see it unless there was somebody who complained and then that would be opened and it would be made available.

This method here, whereby people could come in and

see what assets people had, what would be your observation on that? Do you see anything with the Manitoba model whereby they would put it in an envelope and, if somebody was talked about as being in a conflict, they would open it up and show it?

**Mr Lauer:** I'm not familiar with the Manitoba legislation, but I think just the fact that what a politician owns is there and there's access is important in considerations of how councils vote. I think that we've seen a lot through the media and through courts and what not, what's happened over the last few years in various municipalities with regard to conflict, and I think this will attempt to address some of the problems that have occurred.

**Mr Drummond White (Durham Centre):** Thank you very much for your presentation, Mr Lauer. You spoke at some length about issues around accountability and I want your opinion on a couple of matters, first of all, the issue of disclosure of assets. In this case, in these reforms we're talking about a very limited disclosure, nothing like the 45-page report that members of provincial Parliament fill out every year. Do you think that limited disclosure, which would happen after your election, would be the sort of thing that would stop you from running for municipal office?

**Mr Lauer:** No, it wouldn't stop me. I know there's some apprehension about the legislation from incumbents in the sense that they feel it might impact their involvement. I don't think it should impact anybody's participation at the municipal scene.

**Mr Drummond White:** What you're suggesting there is that if you are challenging an incumbent in ward 6 or whatever, then you would have access to information about their financial wherewithal: very, very general information, though.

The argument then is that you don't have to disclose yours but they have to disclose theirs. I would think that a municipal scene incumbency has its own merit, so if people are disadvantaged by having to disclose, they are also given a tremendous advantage by having had their name in the public for the previous three years. You don't think that would disadvantage them?

**Mr Lauer:** No, I don't. Certainly, obviously it exists at the provincial level. I think if anything, political parties probably neglect to go digging for what incumbent politicians may have in their own assets. I don't think that's something that we look at. But I think it's important to at least be made aware when it comes to votes on council and what votes may impact, what decisions are made. Just owning property, there are a lot of numbered companies that people may have involvement with, and I think it's just cleaning up the process and making things more aboveboard and open.

**Mr Drummond White:** Last is the issue about the election of the chair. You're in favour of election of the regional chair?

**Mr Lauer:** An election or—obviously some changes have to be made to the way our chair is anointed, appointed, here in the region of Durham.

**The Chair:** Thank you for participating in the hearings.



## DURHAM BOARD OF EDUCATION

**The Chair:** I invite the Durham Board of Education, Ms Patricia Bowman and Mr Lewis Morgulis.

**Ms Patty Bowman:** As you have heard, I am Patty Bowman, the chairperson of the Durham Board of Education. Joining me this morning is Lewis Morgulis, the vice-president of the Ontario Association of School Business Officials and also a planner with the Durham Board of Education.

This morning we would like to address you, as our portion on Bill 163, specifically on issues that affect the Planning Act. We'll focus our comments there. We're not here to touch on anything to do with or offer comment on conflict of interest.

I also understand you'll be hearing from the Ontario Public School Boards Association into the future, and while we are certainly members of that association and they do speak on behalf of all public boards in the province of Ontario, I just underscore that as far as not perhaps having seen representation by individual boards in each community, they do speak on behalf of all school boards.

The Durham Board of Education currently educates over 59,000 students in 112 elementary and secondary school facilities. As one of Ontario's fastest-growing school boards, the Durham board has seen an enrolment increase by over 11,000 pupils in the past decade. That represents a 23% increase.

This rapid growth has resulted in the escalation of portable classrooms and the need to transport many pupils at considerable cost. The Durham board accommodates over 12,500 students in 520 portable classrooms. During the next five years the board's enrolment is projected to increase by 12,000 students or another 20%.

The enrolment pressures that the Durham board has experienced in the 1980s will continue throughout the 1990s and beyond, predominantly due to residential development. The rate and location of residential growth in Durham will have a significant bearing upon the education of present and future Durham board students. Residential development greatly influences how students are educated, where they are educated and what types of facilities they have access to during their schooling years.

Budget dollars used for transporting students to holding schools cannot be used directly for educational purposes. Opportunities for extracurricular activities diminish when pupils are transported to schools outside of their neighbourhood. Access to school libraries, gymnasiums, washrooms and other essential facilities become limited when enrolment far exceeds the capacity of the school.

Well, so what? When we say we have 520 portable classrooms, we're saying in effect that we have over 20 elementary schools in portable facilities. We have those big yellow school buses transporting children across their municipality and across municipal boundaries on a daily basis. We're saying that we have in excess of \$550 million worth of hard-core building space that we have built and continue to maintain, space which we have planned, developed and occupied in isolation of the overall vision of community development in Durham.

Of course, we are only one of the many partners consulted in the planning process and we have no objection to the fact that we have been. The objection for school boards rests primarily in the arena of the timing of that consultation. We in Durham have established a track record for community development through the use of our schools and educational programs.

## 0940

As an example, those of you who read the Toronto Star I'm sure are well aware of the misleading comments on the new education complex built recently in Durham, but we have just opened a complex containing a secondary school complete with playing fields, a child care centre and a community education centre, all on an 18-acre parcel of land, in addition to having municipal support for community use as well.

As you see, Durham already has a vision for partnerships in the planning process and a track record for delivering upon the foresight encompassed within those plans. The challenge, though, is to think that we're the only person we can partner with, because the only individuals who are consulted long-term on the long view of development in this community don't include Durham board.

Of course, there are no limits upon partnership after initial consultation, and we do so to the best of our ability with our local partners and have ourselves on record as seeking multilevel partnerships in community development that would encompass a vision for the principles outlined within the body of Bill 163. The concern, however, is that there's nothing in the legislation to recognize the joint responsibility of all levels of municipal government to communicate and construct a viable, environmentally sound vision of the future.

The Durham board is here today to express our belief that the Planning Act should reflect the fact that residential development has a significant impact upon school boards and the quality of education in Ontario. For the 1990s and beyond, two facts are obvious: residential development will generate school-age children and those same school-age children will be educated. Unfortunately, the Planning Act does not provide school boards with an appropriate role within the planning process.

School boards are required to respond to residential development and to accommodate pupils when generated but are not empowered to influence the development proposals that affect them so greatly while the proposals are in their initial planning process. Recognizing boards' responsibility to influence development proposals will enable boards to effectively and efficiently accommodate pupils and provide quality education for all Ontarians.

In February 1993 the Durham board addressed the commission's draft report, and I do believe you have the significant content items before you on that one page back and front. I am not going to go through those in detail this morning for you. I expect you may already be familiar with and, if not, can familiarize yourselves with the concerns that are raised there.

What I will say is that on February 15, 1993, the Durham board reiterated the concerns outlined before you

in a presentation to the Sewell commission. Further in the consultation process, chairpersons of the greater Toronto area, through the Ontario Public School Boards Association, met with provincial staff to express the practical philosophy of the changes outlined in this report. The final report of the Sewell commission omitted all requests of the Durham Board of Education, except the request to be notified of residential development proposals.

In December 1993 the Ministry of Municipal Affairs circulated a consultation paper, *A New Approach to Land Use Planning*, based on the Sewell commission's final report. This paper dealt with general policies and not specific amendments. Ministry staff did inform Durham board that the ministry would be reviewing all comments submitted to the Sewell commission when preparing Bill 163. Assuming that was done, Bill 163 still does not include any of the amendments requested by the Durham Board of Education and does not, in our view, improve Ontario's planning system in its approach to education.

In conclusion, as the second-largest employer in Durham region and as the largest developer of public service facilities, it is imperative that the economic community development policies of the Planning Act provide school boards opportunities to work in partnership with those responsible for maintaining municipal development.

With that, I will respond through you, Mr Chair, to questions. I can certainly comment on the philosophical nature of our concern, and Lewis Morgulis will speak to any specific comments you have on the act itself.

**Mr McLean:** Welcome to the committee this morning. You bring a new perspective to what we have heard over the last 10 days or so.

The Planning Act, with regard to subsection 6(2) that you want amended, "A ministry, before carrying out or authorizing any undertaking that the ministry considers will directly affect any municipality or school board, shall consult with and have regard for the established policies and procedures of the municipality and school board," whereabouts in the act, and I haven't found it, unless it's in 50(4)(j) of the Planning Act, where it would speak about that very issue—have you had any input into any meetings that have been held with regard to this legislation that you're aware of?

**Ms Bowman:** I've outlined the input we have had, which has been on four different occasions.

**Mr McLean:** Did you make a presentation to the Sewell commission?

**Ms Bowman:** Yes, we did, in February 1993, further to the greater Toronto area office in the spring of that same year on the philosophy of the development. To date, the requests you have before you are precisely the requests that went forward at that time and were again reiterated through the GTA office by our staff and were promised to be reviewed before 163 was complete.

**Mr McLean:** Could I ask the ministry staff whereabouts in this legislation it refers to that very issue of the school boards having some input into subdivisions and some of the aspects of the building that's going on? Could you update us on that?

**Mr Philip McKinstry:** Yes. Normally the way it works in the development process is that the approval authority circulates applications to interested agencies. The Planning Act does not specify who those should be, just that this circulation should take place. As far as I know, the school boards are regularly circulated on subdivisions and are given the opportunity to acquire sites, to purchase sites, when necessary.

**Mr McLean:** Thank you. You said 520 portables. What's your enrolment in Durham?

**Ms Bowman:** In excess of 59,000.

**Mr McLean:** So you would have about 15,000 in portables?

**Ms Bowman:** Yes, I believe we have roughly 13,000. I think my comment was 12,000 to 13,000.

**Mr McLean:** Have you done any amalgamation with regard to busing?

**Ms Bowman:** With the separate school board? Most certainly. In fact we offer joint services with our separate coterminous board on five different areas, transportation being only one; purchasing etc, others, computer and data processing.

**Mr McLean:** The consultation process: The ministry staff indicate that it's there for input and it's circulated to school boards. I know I'm a little more familiar with the Simcoe county board than I am with your board and we do meet periodically with the administration as local members. They tell me that they feel the same way, the board of education in Simcoe, that they don't appear to have the availability to have input that they feel when they're planning their schools. You appear to be of the same opinion.

**Ms Bowman:** We're really focusing and we have an excellent relationship with our municipal governments, regional government, and that goes without saying. I trust you understand that. The issue becomes that when you're talking about a vision for the future and when I reference the comprehensive set of policy statements on planning and development, we're talking about fostering communities that are socially, economically and environmentally, culturally healthy and make efficient use of land for new and existing growth etc.

All we're saying is that we're part of that initial vision. As the largest developer of public use facilities in buildings within this region and as having a proven track record for partnership, we believe our place in the process should be in the initial stage. Right now we are consulted with after the fact, after the initial stage of planning occurs, and we're saying, "Folks, we just want to influence that initial view so that we're not working at the back end of the process." In fact as far as public dollars go, we would spend more than any other public body in this region to develop those facilities.

The school systems, the first level of municipal government in this nation, have long been the providers of community facilities; they've long been the hub of the community. If we're to develop culturally sound, environmentally sound practices and use of space, we're just suggesting that we should return to that initial consultation through school boards as well.



**Mr McLean:** I have one final question before my time runs out. You talk in your brief about powers to delay development applications. That would be quite a power. Would you expect that you could issue an order to the minister to delay a certain application until the school site was established?

**Ms Bowman:** I'll ask Lewis to comment on that.

**Mr Lewis Morgulis:** Yes. I'll answer that as clearly as I can, sir. In terms of delaying development, there are many ways to delay it. We could look at or request phasing of a development such that all the plans in an area wouldn't go ahead until we had adequate capacity in schools. The process right now works by way of we submit to the Ministry of Education and Training for funding and some period later we have approval for some of our projects. Currently we've got requests in for 41 growth projects, that's projects required due to increased pupils in the region.

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What we're looking for is the ability not to defeat development, but at least to stage it and for us to be able to adequately house it. I guess when you get to the adequacy of a school site and you say "Is there adequate accommodation?" if you have 15 portables on a school site and you have a soccer pitch and you can put 15 more portables on the soccer pitch, yes, there's adequate accommodation because we could fill up the rest of the site.

As to the issue of quality of education, you probably run into a problem quite quickly when the 15 portables of kids don't have access to library, gym, all of the other facilities that go into a school. What we're looking at is an ability to stage or phase development and to make sure that facilities might be in place up front before 1,000, 2,000 units were to roar ahead in a region.

**Mr Drummond White:** I want to congratulate you on your presentation, Ms Bowman, and also to make note of the fact that the school board, given the increasing population, where it has been in the southern part of Durham region progressively a bedroom community—I mean, you have done incredible amounts of work to accommodate those pressures, taken some real initiatives, the year-round school proposal that you worked through very thoroughly. It wasn't successful at the time, but it still shows that kind of initiative, that kind of response very responsibly.

The issues that you brought forth, you're basically saying locally with the municipalities and with the region, the school board is included very much in terms of the planning process. What you're suggesting is that within the act that should be across the board, across the province. It shouldn't be something which may or may not occur in a regional municipality.

**Ms Bowman:** If I might clarify, Mr Chairperson, through you to Mr White, school boards now function through the filter of municipal government, the other levels of municipal government. We're suggesting that we should function alongside cooperatively, obviously with the municipal government retaining the influences and responsibilities it has for development. Rather than

going under through a filter, we're saying bring ourselves up to the same level of influence so that we can work cooperatively.

**Mr Drummond White:** I think, along those lines, the Durham board has been in the forefront, certainly in the greater Toronto area, in terms of involvement as partners at that level. Certainly in other regional municipalities there's not been that kind of involvement. I remember meeting with you and the minister responsible for the GTA at the time. You were the only school board chair who had participated at that level. I think that's emblematic of the partnership you have here. I think your points are very, very well taken.

**Mr Jim Wiseman (Durham West):** I have a number of questions. For example, on your document that you handed to us, you say that subsection 6(2) of the Planning Act should be amended to read as follows. You have the words "have regard for." "Have regard for" is a rather weak phrase. It says all that it requires them to do is to say they looked at it, had regard for it, and then ignore you completely. I would like to hear a comment from you about whether there should be some stronger wording in that section.

The second question that I have is that in the Planning Act parkland dedication is 5%. I'd like to hear your comments about whether you think that it would be appropriate that that be increased to, say, 7% or 8% with the schools playing an equal role in the division of that land for the use of new schools.

The third thing I'd like to hear about is infilling and whether or not you would feel that it would be more appropriate for planning and development to take place in the downtown cores where there are already facilities rather than having to go to fully greenfield creations of elementary and secondary schools.

**Ms Bowman:** I'll ask Lewis to speak to the last two and I'll cover the first and comment on this.

**Mr Morgulis:** As to the issue of parkland dedication, it seems ironic that I'm addressing it today because several years ago I, through my position in the Ontario Association of School Business Officials, had prepared a brief to go to the Ministry of Education and Training and the Ministry of Municipal Affairs requesting that a dedication of school site land be equal to parkland at 5% in a development or cash in lieu thereof. The reason was that the two largest providers of community facilities were the recreation department and boards of education or school boards. Yes, I certainly would concur with that, and that would certainly be a recommendation I would look to, to ensure that school sites would be set aside. So thank you very much. It's a wonderful opportunity.

Infilling, very quickly: Yes, it makes more sense. Obviously, as neighbourhoods continue to develop and get older, the number of students decline, and you're quite right, green-field sites do present a number of problems, requiring a site, getting the facility. Certainly we would look to more infilling taking place, and that would help the process of accommodating students. They would be in the place where the schools now exist.

**Ms Bowman:** If I might comment further on the issue

of parkland dedication briefly, the whole area of multi-use facilities, as you well know, partnerships are difficult to arrive at, difficult to work through and we have, as I've already mentioned, models that support the development in early stages of partnerships.

One of the challenges we face is we end up with a 5% dedication and we end up with two schools on one site, joined at the back with a park. It's our first step at partnership: separate school on one end, public school on another and still only a five-acre park site or a six-acre park site, hardly enough when children are out at recess time to be combing the same area of parkland that they would if they were isolated on their own.

Now what that lends to is you have school boards saying: "Why on earth would I want to build with my partners when I don't get any more parkland and I compromise the quality of the facility for the community? If we were to separate that facility, we're going to end up with 10 acres of parkland roughly and obviously that's going to be better for the community overall." So in fact we impede partnerships. Now while it may not have to be double what boards currently receive, it certainly could be a higher percentage and would allow us to accommodate a multi-use facility easier.

In the area of strengthening language, anything you can do to strengthen our position we would appreciate. We expect to not be able to run the mile the first lap out, but this is our fourth round and I'm getting a little tired of travelling to Toronto and speaking to staff and to commissions. Not that I don't respect the process or the time you have taken today, but one expects that sanity should prevail when one speaks on things that would improve the quality of life and harmonize the development of a community. We again submit to you that if you wish to strengthen the recommendations we have provided, we would only wholeheartedly endorse that.

**Mr Curling:** Thank you very much, Ms Bowman. I think your presentation is to the point, precise and quite clear. I think what I'm hearing from you is if consultation is listened to and acted upon it could be most effective, and I'm getting from you that over and over you've made presentations and you're not quite sure—I think you're convinced that they have listened, but they haven't heard.

What I'd like you to comment on actually, because you seem to have educated somehow that, and rightfully so, it should be a part of the process if there's any planning to be done, because it does impact upon the schools. Intensification is one of the things that the government is, I think, rightfully looking at, to see how we can utilize our resources better, but again, without much consultation it seems, and even if it is so, they are coming right ahead and have no regard somehow to the impact it has on the schools. Could you elaborate on that and say what impact you would say intensification has had on your board?

**Ms Bowman:** I'll start and perhaps Lewis would like to wrap. Let me speak about two things. One, we've just received approval for an elementary school site which will be built on the back end of one of our secondary schools. Intensification: We can't accommodate the pupils within. They're well beyond the capacity of the school they're currently attending. We are certainly, in and of

ourselves, seeking land and a position better utilizing, as we shift, you know, to a more environmentally sound use of lands, to put more even on a site, to its maximum capacity. So we're doing that as one example.

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The other is a very broad issue and Mr White touched on it earlier. That's the issue of modified school year, school shifts. Intensification has its challenges. There are some areas of the region where that would not be a concern and we could accommodate that. In fact it would help our overall position for capital requests.

There are other areas of the region that couldn't accommodate intensification in a strong way in their downtown cores, in their older residential areas. When we look at changes to the whole philosophy of community development, then we have to be looking broader than the planning issues themselves and be saying, and I appreciate your question, "How does that affect the school culture?"

We appreciate the support levied by the Toronto Star on behalf of school boards to explore modified school year and the willingness of our Minister of Education and Training to listen to the voice of school boards six years ago. In 1988, when this board brought the issue to Canada for large school boards, there was no support, and I don't believe I would be inappropriate in that suggestion. Very little, if any, support across the province or the nation.

Again we have to be able to communicate on broader issues than planning, and the act covers that, the issue of harmonizing the philosophy of community development. Those are two specifics: modified school year is an example, school shifts; the second being the use of existing board facilities to redevelop.

That may mean the modification of a current facility, which we do, could mean the use of lands where we have already a secondary side, as an example, and using them to a better advantage through the example of our education centre, secondary school site, child care, community use, facility all on one site. Again, another way to look at it.

**Mr Morgulis:** Very quickly, I think one of the interesting examples of intensification we're going through right now is the addition of junior kindergarten to our board, which is adding 4,300 students predominantly in areas where we already have schools. We're finding in some of the older schools we're having the easiest job because we do have the facilities to redevelop and to renew. We're finding the biggest problems, of course, in the outlying areas where we're waiting for new schools, and it's adding to the problem of acquiring schools that are the right size in the time that we need them.

As we redevelop areas within the communities, in the existing core of the community, we're going to find that there are a lot of opportunities to renew some of our facilities and to fill them with students at a lower cost than having to truck them in from the outlying townships or from outlying areas within the municipalities. It makes for an efficient use of the facilities we already do have,



and we have over 30,000 pupil places in existence in core building space in the board.

**Mr Grandmaître:** I'd like to address the cost of education in the province of Ontario. As you know, the provincial government, or Mr Laughren, some two and a half years ago initiated the Fair Tax Commission. This Fair Tax Commission was supposed to resolve all of the problems that this province is faced with. Not only this province, I think it's right across Canada, because, as you know, between 50% and 63% of the cost of municipal taxes goes towards education. This Fair Tax Commission recommended that a fairer, more equitable system be put in place, income tax. What are your thoughts?

**Ms Bowman:** I wish I'd written a paper on that one. Pulling back from the recesses of my mind—

**Mr Grandmaître:** Maybe we can have another meeting.

**Ms Bowman:** Yes, hopefully, it will come as it flows. As far as should there be a property tax for school tax, my suggestion to you is yes, absolutely, the reason being it's the only visible tax, I would suggest, broadly visible that Ontario residents have. We cause great conflict and great pain for ourselves in doing so, but people know what they pay for. If they don't like it, they let you know and they dump you or re-elect you on some of those issues, and finance is only one.

The issue of education development charges is another one that we're moving ahead on. Again that helps. The greatest help to school boards—I would suggest two things. One is harmonizing the financial fiscal year to the school year, and I know that has federal problems attached to it as well in your financing structure. The second, if I can remember now that I've just said that—

**Mr Grandmaître:** Why don't you go to number 3?

**Ms Bowman:** Why don't I go to number 3 and come back? Very special.

*Interjection.*

**Ms Bowman:** To actually be pausing. I know, it's not normal for me. At any rate, you're finding me at a loss for words, which is a first, and my MPPs know it.

In the finance reform project, which I would suggest to you is probably a more accurate goal for school boards, we're talking about one education block grant divisible according to a board's own powers and responsibilities. That allows us to say, "Okay, in our area we choose to allocate those moneys for this purpose and we're still accountable at the local level."

Issues of transportation: We were well ahead of the province's requirement to reduce transportation costs further, having dropped in excess of \$3.5 million over the last three years in transportation costs in this board. Again, being ahead of the province didn't exempt us from the penalties all would suffer if we didn't go down further.

We are working on complying on finance reform, if you like, but the issue of the extension of separate school funding and the requirement to confederate, if not amalgamate, certainly requirements to confederate would realize some savings, though not as significant as the public at large may consider now.

I would move to the education finance reform project rather than the Fair Tax Commission as a basis for a philosophy that probably would bring in a lot of school boards and be the first step for greater accountability.

**Mr Grandmaître:** You don't think it should be paid through income tax?

**Ms Bowman:** Absolutely not. Hidden tax, unless you—

*Interjection.*

**Ms Bowman:** Mr Chair, if I might—unless you can provide that there is a guaranteed dedicated tax at the provincial level which will be identified for the public. There has never been a guarantee of that and it will be lost in general revenue no matter how it is collected on behalf of education, and it may or may not come back out the appropriate end.

**The Chair:** Ms Bowman and Mr Morgulis, we thank you very much for sharing the concerns of the educational system with this committee. Thanks for coming.

**Ms Bowman:** Thank you very much, and may I say we certainly appreciate the time here and, in particular, just to acknowledge the representation of our MPP since we're in Durham and those who are not sitting at the table but are present here as well. We appreciate that. Thank you very much.

**The Chair:** Thank you, Ms Bowman. With that I had failed to mention the presence of Mr Allan Pilkey, the member for Oshawa, and would say that we're happy to be here, Allan, and happy that you are here listening to the concerns of the committee.

**Hon Allan Pilkey (Minister without Portfolio in Municipal Affairs):** Mr Chairman, if I just might, on behalf of the Oshawa riding, welcome yourself and all members of the committee and suggest to you what you've already found out, that you're going to hear some words of wisdom and some very thoughtful presentations from some people in this particular area who have a stake in the area and know what they're talking about. I know you will find it will be very valuable in your considerations. Thank you again for having me here.

OSHAWA-DURHAM HOME BUILDERS' ASSOCIATION

**The Chair:** We call upon the Oshawa-Durham Home Builders' Association, Mr Stephen Kassinger, first vice-president, Mr Bob Annaert and Ms Jo Casey. Welcome to this committee.

**Mr Stephen Kassinger:** I thank you for the opportunity to take the time to listen to our concerns with a piece of legislation which is well intentioned but unfortunately misguided.

My name is Stephen Kassinger. I'm the first vice-president of the Oshawa-Durham Home Builders' Association and a local builder-developer. With me here today is Jo Casey. She's a director of our local association. She's also chair of the Ontario Home Builders' Association's land development committee and she's also a developer in her own right. On my left is Mr Bob Annaert. He's a director of our local association as well and he's with D.G. Biddle and Associates, consulting engineers specializing in land development work.

We are here representing the Oshawa-Durham Home Builders' Association, the individual members, employees, suppliers, trades and so on. Our association has approximately 130 member companies encompassing the vast majority of the residential construction industry which, on a national scale, is the largest employer in Canada, responsible for more than \$40 billion in annual revenue and 658,000 workers.

The ODHBA covers the regional municipality of Durham, including the provincial ridings of Oshawa, Durham East, Durham Centre and Durham West. Most importantly, however, we also represent the new home buyer, the individuals and families who wish to purchase a new home in the future who without us are without representation. It is all these people whom we see as threatened by this legislation.

As you well know, the planning process is in dire need of reform. World War II was fought in less time than it takes to run a parcel of land through the approvals process in Ontario. It was the Honourable Dave Cooke two years ago, then Minister of Municipal Affairs, who identified the problem and appointed a provincial facilitator to cut the red tape and get faster approvals.

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He stated that the province's planning approvals process does not work. It is too long and too confusing, and it is costing us jobs. Mr Cooke was dead on. The Sewell commission on planning reform was convened, met appropriately with representatives of our industry, met with the public and ultimately produced its report, and the end result of this whole process is Bill 163 as we know it today.

Unfortunately, Bill 163 as we know it today does not resolve the problems identified at the outset. The red tape has been cut. Unfortunately, it has been cut lengthwise. Instead of a simpler, shorter process, we feel that the bill is so vague in some areas, conflicting in other areas and misguided completely in other areas still that the unfortunate end result will be a more complicated, longer and more expensive process.

The persons affected will obviously be those associated with residential construction, but most affected will be the consumer, the new home buyer who will pay a higher price for a product with no appreciable improvement, and that is certainly not what the bill's authors intended.

We are here today to point out the inconsistencies, the vagueness and the incorrect assumptions so that the bill may be revised to correct the problem, not aggravate it. We feel that there is sufficient concern to warrant withdrawing the legislation and revising it wholesale. While our concerns are far-reaching, due to time constraints, we have selected two of the most contentious issues to discuss with you today.

The first of these is the section of the legislation calling for changes to the subdivision approvals process.

On the issue of public meetings for subdivision approval: The final report of the Commission on Planning and Development Reform in Ontario made no mention of a public hearing for plans of subdivision.

The first notice that the government intended to

introduce a new public consultation process in the plan of subdivision approvals was when the bill was tabled in May 1994.

The bill introduces in subsection 51(14) the requirement for a public meeting never before required in the plan of subdivision approval process.

The bill provides that public consultation be required at the official plan and official plan amendments stage when major land use issues are decided in a conceptual form.

The public consultation process is again used when the changes in zoning on a property are dealt with to define and implement the land uses established in the official plans.

A plan of subdivision application cannot be processed if the plan does not conform to the official plan and the plan is implemented by the passing of a zoning bylaw. Both of these planning processes are open to public input as they involve decisions about land use that will have an impact on the enjoyment of the community during the usual course of day-to-day activity.

Generally, all decisions that would impact the general public and immediate neighbours would be open to the public during the OPA and zoning bylaw process. To introduce a further public meeting goes beyond the public interest in openness and accountability and introduces additional time and costs in the process.

The public interest is served during the subdivision approvals process by elected officials who have been delegated to review the comments and advice of professional staff of planners, engineers, environmentalists and so on. Certainly the effect that would be caused by this additional unwarranted public scrutiny is not the result intended by the reform process.

This additional and unnecessary public hearing process does not serve the public interest and introduces further impediments in the development process and is being proposed without the benefit of consultation with the building and development industry and must not be allowed to be implemented.

On notice of change: The legislation also proposes in subsection 51(34) that public notice be given of any change to the approved plan, regardless of how minor this change may be. Again, this proposal goes beyond serving the public interest in openness and accountability and will add delays and costs to the process.

It is certainly not in the interest of the public to allow delays for a much-needed housing project just because notice must be given for a change in lot size from 15 metres to, say, 14.8, or because a walkway or road allowance must be shifted a few metres.

Generally, redline changes to a draft approved plan are insignificant and will not impact the public in general, the abutting neighbourhood or even those who will eventually live in the subdivision.

This notice will no doubt lead to requests for appeals and even if the appeal is deemed frivolous or vexatious, costly time delays will not be avoided.

On lapse of appeal: The legislation proposes in subsection 51(21) that draft plan approval lapse at the expiration



of the time period specified by the approval authority being not less than two years.

This provision of the bill is adding unwarranted risk to a development process which already has considered risks attached to it.

Currently land must be purchased not knowing fully if the land use will permit a reasonable return. Expensive studies must be carried out to determine the environmental concerns, if they can be satisfied and at what costs.

If all of the above goes well, draft plan approval can be granted subject to certain conditions which then must be satisfied. Further studies are finalized and expenses on land surveys, engineering and studies are accumulated.

If the arbitrary time frame expires prior to completing all of the above, all could be lost.

If the market changes during the process to warrant an amendment to the product or if the market demand declines prior to the arbitrary time frame expiring, all could be lost.

The government argument to allow draft approval to lapse so that the municipality can allocate sewer and water capacity to developments ready to go ahead is nonsense. Capacity for municipal infrastructure can be allocated with the execution of subdivision agreements as has been the case in the regional municipality for the past 20 years.

Once draft plan approval is granted, it should not be removed. This additional risk will only cause concentration in the development industry, and therefore this change in the legislation must not be allowed.

On streamlining and time frames: As indicated earlier, one of the intents of development reform was to provide streamlining in the planning process. The government described the system as too cumbersome and complicated, and decisions on what development should take place and where it should go take far too long.

Our association is in full agreement that the planning process is in dire need of reform, and I'll underscore this again. The Second World War was fought in less time than it takes to run some parcels of land through the approvals process in Ontario.

In its wisdom, the government has chosen two methods to try to implement the streamlining intent, these methods being the screening of appeals to the OMB and the establishing of time frames for certain phases in the development process.

It is our association's contention that these methods do not fulfil the intent of the reform process.

On the issue of screening of appeals to the OMB: We wholeheartedly concur that there are far too many appeals made that are intended to delay, are frivolous or vexatious, and that the Ontario Municipal Board should be empowered to deny a hearing on these grounds.

Denial of a hearing on the grounds of prematurity, however, should be removed from the legislation as the determination of prematurity can only be decided by due process.

The proposal in the legislation on OPAs, zonings and

subdivisions to empower the approval authority to refuse to refer an appeal will certainly deny due process and the appeal process will effectively be lost. This fundamental right cannot be taken away by this legislation.

On time frames: Obviously the intent of introducing time frames into the development process was to streamline the process and this is welcomed by our industry. However, a review of the bill indicates that these time frames only deal with a portion of the process, and in some cases they will actually lengthen the process.

The time frames proposed in the legislation start upon receipt of the complete application. They do not include the pre-application time spent on ensuring a complete application. The additional requirements that the bill is implementing, to provide better protection to the environment, will no doubt add considerably to the current time frame.

The time frames proposed in the legislation stop at the notice of decision at OPA or a draft plan approval of the subdivision. They do not include the time for appeals after the approval authority makes a decision. Again, while the intent is admirable, the implementation fails to provide faster decisions.

The commission intended, among other things, that time frames deal with situations where municipalities ignored or did not take effective action to respond to an application. Currently, if applicants believe that their official plan amendment application is not being dealt with fairly, they have the right to request referral to the OMB after 30 days. With the proposed legislation, the applicant must wait 150 days for the approval authority to review the application and make a decision and a further 15 days for council to refer the decision.

The bill as proposed does not provide for determining if effective action is being taken, so it should not be allowed to be implemented. Let us take a step back and take the opportunity to consult on an effective streamlining process.

In summation, we are pleased that the government has taken heed of our concerns regarding a lengthy and complex planning approvals process, yet we are disappointed by the implementation of the proposed reforms.

For the reasons outlined earlier and for many others which, due to time constraints, we are unable to touch upon today, we feel strongly that this bill will impose more unreasonable costs, force many small firms out of business and strangle the largest industry in the province, which is only now slowly getting back on its feet after a most debilitating recession.

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We urge you to reconsider not only the items alluded to here but the bill as a whole. We agree with you that there's the need to reform the process, but let's not rush this thing through just to pass something. Let's work together to get it right so we can get on with our jobs, that is, providing the best housing in the world.

Thank you. That concludes our formal presentation. We welcome your questions or comments and we'll redirect them to the panel.

**The Chair:** Thank you very much. Just a quick

reminder to the members: There are three minutes per caucus, but three minutes go very, very quickly, so I remind you about that time.

**Mr Wiseman:** I cannot tell you how fundamentally I disagree with your comments about lapse of appeal and subdivision. It seems to me that what you have here is a request that the developers get everything that they want and that the community have nothing in return.

The reason I say that is because subdivisions and official plan amendments often create anomalies in communities where an official plan is created where there's balance, there's phasing, there's a whole host of balanced approaches, and then along comes an official plan amendment that'll change, say, one section of high density to low density while leaving the adjacent property as high density. What you find is towers in the middle of medium- to low-density dwellings, and this is unacceptable to the community; or you find areas where pieces of land are sliced off because changes are made to the official plan or changes are made to the plan of subdivision, and that creates other anomalies which are completely unacceptable to the community and even to the local council as time progresses.

You're going to have to create a much better argument for me to oppose the lapse of appeal, because I would like to see this section strengthened, where any official plan amendment that is of major significance would have to have the entire official plan restructured and redone, because it just doesn't make sense and it's unfair to the residents in those communities who back on to these areas to have their land changed.

Just on that, there's one more comment. I think the staff would be able to say that their interpretation of redlining is not correct, if you could comment. You commented in Chatham on that, if you could just revisit that.

**Mr McKinstry:** The way the bill will work is that where there are changes to a plan of subdivision after draft approval, public notice is required. I guess the reference to Chatham is, there were some comments and I believe there were comments in London as well, about reducing the lot sizes in a subdivision after a number of years because the market had changed. I guess the government's view there is that where you're reducing lot sizes, that could constitute a fairly significant change and therefore there is some obligation to notify the public and allow some public input.

**Mr Kassinger:** But, you see, if there's no density change, the draft plan has already been approved and been consulted with the public at that point. It's approved. The process has occurred. What we're taking exception to is the fact that after the plan has been approved, if it's not implemented within the two-year time frame, then we have to go through the process again, which is not streamlining.

**Ms Jo Casey:** Apart from that, we're concerned about density. If the density doesn't change, we don't understand your hypothetical. But on the issue of lapsing, I can tell you that that condition in this bill will ruin me, and I'm a developer.

I'd like to go over the development industry and point out to you that the major builders, of whom we're very proud in Ontario—Bramalea, Coscan, Monarch—are not models of the development industries. Most of the builders in Ontario build 10 to 15 houses a year. The vast majority build this amount of houses. I myself close 35 houses a year. If you put in this lapsing of subdivision draft plan approval, I'll go under. Now if I go under, what happens to the guys who do 10 to 15?

I think the members of the Legislature are unaware of the industry. If you do some history, you'll remember that the Sewell commission was really started to handle the government's concerns about Muzzo, Bratty and the boys who were running around north Toronto. Those men are wonderful businessmen; they do business differently than anyone else in the province.

When you go down to the public-owned companies like Bramalea and Coscan, they still are not the model of the industry. The model of the industry is individual and small firms building 10 to 15 houses a year. The first thing that we have to do when we consider a project is go to our banker. If we have this lapse of draft plan approval, we will not get funded. We will not be able to borrow and the industry will just fail.

**Mr McKinstry:** If I could just clarify for the benefit of the committee, the lapsing of draft approval is an enabling provision which will allow the approval authority, if it wishes to impose a lapsing date and that lapsing date can be extended—really it's intended to allow municipalities or approval authorities where developments are clearly not going ahead. But it is an enabling provision.

**Ms Casey:** It is an enabling provision, and a lot of this bill is in those gray areas, but—making this presentation to you today, we submitted 30 copies of our submission. When we put in a draft plan of subdivision or a subdivision application where there's a regional government, we submit 50 copies; where there isn't, we submit 35 copies. That's a lot of people discussing a piece of paper, a lot of people whose opinions are different. We get then from the word "enabling" into the delays and the time frame problems, and it's just strangling us.

**The Chair:** Mr Curling, I remind you it's almost 10:30 and there are still other members to ask questions. Please be aware of that.

**Mr Curling:** I know my colleague here has a few, but he won't have time to say those words. One of the problems about these public hearings or these consultation processes is that there's not enough time to really get some of your concerns down generally to all parties. It's very sad democratic process. I want to make that comment. I'm not blaming the government. It's just how the whole thing is structured.

There are so many things here that I want to say, but I'll make just a general comment. Public participation is extremely important in this process of planning. However, if government has clear and precise policies up front and let's everyone know what's happening—I don't want to say there will be less participation but they would understand where things are going.



It's when things are all confusing, at the end people are not quite sure what's happening to them in the neighbourhood or beside them. Then they want to have their input and sometimes they are terribly informed to the cost of many, to the cost of the individual and to the cost of the developer itself.

We also have to change our attitude about developers. We must. We can't feel that they're all gougers and what have you and decide that their housing policies are all rent-gear-to-income situations. It's all a housing policy that encompasses people like yourself.

One of the things I'd like you to define for me, and which we have not been able to get a definition on, is minor variances. You've mentioned here that this may help considerably, but we've got to know what is a minor variance to you. What do you see as a minor variance so that that could be cleared up and not be held up in hearings from time to time?

**Mr Kassinger:** I'll refer that to Mr Annaert. He gets involved with minor variances quite often.

**Mr Bob Annaert:** The minor variance section in the bill is clear enough and we didn't bring that up as a point of argument. Minor variances are set out to make minor adjustments to the zoning bylaws, make minor adjustments to land uses. We as an association, I think, agree that this is a very small process in the planning process.

I think the point that we were making is that the act will allow the referral to the OMB to be handled by the decision-making authority. We encourage that because that, in our opinion, will free up the Ontario Municipal Board to make the more complex decisions on the official plan amendments and some of the bylaws.

1030

**Mr Noble Villeneuve (S-D-G & East Grenville):** Thank you very much for your presentation. The screening of appeals to the OMB, I think, needs to be looked at very, very closely. I think the time has come. I've run into problems in my riding, which is way east of here, with the Ministry of the Environment taking six months or more to reply, not costing the government anything, simply to reply and to make comments. It has been suggested by certain people at Queen's Park that if nothing happens from a government within 30 days, it would be an automatic green light.

**Mr Kassinger:** That sounds fine. We'd have green lights all the way if that were the case.

**Mr McLean:** The intent of the development industry and the ministry streamlining the process: We yesterday had met some consultants and planners at Midhurst. I asked the question, will this new process speed up the approvals or slow them down, and they both said it would slow the whole system down.

The other question I had with regard to referral and amendments to review the application: The minister can make a referral at any time that he sees fit. After you've spent a million dollars, it can still be referred. So there are some major concerns here in this supposed to be, so-called streamlining of the planning process, and all indications that I seem to be getting are that it's not going to be streamlined.

**Mr Kassinger:** We wholeheartedly concur with your observation, sir.

**Mr McLean:** Thank you for appearing before the committee.

**The Chair:** There are some comments here by way of clarification. Mr Hayes.

**Mr Pat Hayes (Essex-Kent):** On page 4 of your presentation, where you mentioned, "With the implementation bill upon us, we find that there are a number of issues presented in the bill that were never considered by the commission," you were talking about the process and plans of subdivision and you say, "Nowhere in the final report of the Commission on Planning and Development Reform in Ontario is there a mention of a public hearing for plans of subdivision."

If you have a copy of the final report dated June 1993, section 77, it says, "To encourage public involvement in the planning process through public meetings, the Planning Act be amended to require that," and then I'll go to clause (c) of that and it says: "For rezonings, lot creation and minor plan amendments, at least one public meeting be required when final reports to the council are being considered. Reasonable opportunities for public comment will be permitted at the public meeting." So it certainly is in the report.

**Mr Kassinger:** I don't see how that is defined as at the subdivision draft plan approval stage, sir.

**Mr Hayes:** You're talking about lot creation in this section, and lot creation certainly falls under subdivisions, so it's there.

**Mr Kassinger:** Well, without the benefit of the document in front of me, I cannot respond directly. But it does not specifically say a draft plan approval stage, sir.

**Mr Hayes:** It's page 110.

**Ms Casey:** But even if you are correct, it's an example of listening but not hearing us. It's not going to work, it's causing us problems, it's delaying the process, and we really do believe you've cut the tape lengthwise.

**The Chair:** Sorry. We have run out of time. We appreciate your sharing your concerns with this committee. The members have heard your presentation.

**Mr Kassinger:** Thank you for the opportunity to speak today, and I hope that we've made some impact on you.

**The Chair:** Thank you. We invite the Durham Environmental Network, Mr Steve Leahy. He's not here, I guess. We'll move on. Chris Smith and Associates? Mr David West?

SUSE EGGERT

**The Chair:** Let's check with the next person. Ms Suse Eggert?

**Mrs Suse Eggert:** I'm here, but this is an hour early, isn't it?

**The Chair:** This is true, but if you're ready to go we are quite prepared to hear you.

**Mrs Eggert:** I'm Suse Eggert and we are a small environmental group. I know some of the gentlemen, but not very many. We actually are not against development,

we are for the environment, strictly the environment. That's what we have done since 1988. I wrote this and I typed it myself last night and it's longer than seven minutes so I guess I better just talk. You don't have that much time. Didn't the people come? Can I read it or shall I just talk?

**The Chair:** Whatever you feel comfortable doing. You have 15 minutes.

**Mrs Eggert:** This is 10, I guess, if I talk fast.

I'm the mouthpiece of a small environmental group in the town of Whitby. We are a small group of concerned citizens, friends and relations. My husband and I are retired. He has been an accountant-manager. I worked with him and then alone for many years. The younger ones of our group are professionals, too busy to put in much time, but always willing to give information and advice. The only exception is a lawyer who attends OMB hearings or mediations with me.

Our group contains a lawyer, a federal crown attorney, a scientist-professor, a vice-principal of a Durham secondary school, former head of English, and some of their secretaries. My husband edits our letters; I don't think he did this one. As you can see, we are no environmental experts. Our education led us to it. For our work we use the implementations, guidelines, policy statements and recommendations of ministries and agencies.

We have been involved in the protection of the three creeks of Whitby from 1988 on, which means most of the environmental definitions set out in alphabetical order in the Comprehensive Set of Policy Statements sent to me for this Bill 163 deputation. In a way we are happy that finally some government body set out to give help, but unfortunately we think this intended help is not enough.

For trying to preserve some natural heritage features and areas etc—I mention everything, woodlands, whatever; we looked into everything—we have been threatened in council chambers and have been told: "All of these environmental matters are your hobbies only. They represent a waste of time and money. Besides, you do not live in the 120-metre radius prescribed by the Planning Act. You are not allowed to speak." This was for the environment, not for something down the road where we live.

When pointing out the implementations, guidelines, recommendations and policy statements produced by the ministries and authorities, also the Regeneration book, the product of the two royal commission hearings conducted by the Crombie commission, we were nearly laughed out of rooms or halls. When, by asking further why they did not want to accept any of these, lots of taxpayers' money has gone into producing them, the answer was: "They do not have any teeth. There are no bylaws. They are not enforceable." Enforceable bylaws are what we need, no pussyfooting around.

I come back to Regeneration. Unfortunately, after reading all of the literature we received for Bill 163, we realized that some of your newly planned sections are contradictory to Regeneration and also to parts on environmental matters in the new region of Durham official plan, where MMA used some parts of Regener-

ation. That's why I became involved. I have been attending meetings, everything concerning both the region's and the town of Whitby's official plans.

When in front of our town council trying to change some development plans destroying a creek valley even though it did not have full MMA and CLOCA approval, I was asked, "Where were you when all of this was discussed? This is all your fault. You should have stopped the official plan" etc. That's why our group was formed. From then on I was there every week speaking up and sending written submissions. Now they wish they'd never asked that question.

Per se, we are not against development as long as it follows prescribed lines and does not encroach, destroy, damage or intrude on the environment and/or social environment. This has been proven in OMB hearings and mediations.

#### 1040

To come back to contradictions: We started to work closely with the MMA, MNR and CLOCA regulations. After Regeneration, we used it all we could, and we're thankful for the help it gave us in our work for the environment. Regeneration uses the Toronto Don as an example. Therefore its recommendations, which have provincial cabinet approval and is meant to be morally binding, about treatment of what in your comprehensive set of policy statements is called natural heritage features and areas, also corridors and wetlands, were seen by us as some success.

But the Crombie commission statements, quoting what I read in the Regeneration book, were: no more channeling or burying of creeks with engineering techniques, grading or dumping of fill, and only approved fill could be used if necessary to stabilize.

We used this for Pringle Creek of Whitby, which was half dead at the time, no good for fish, bad for water renewal and wildlife, after being buried and channelled. This engineering technique did not prove to be successful for the environment, fish, creek or humans. We give this as an example to show how well-intended implementations or guidelines can be abused.

Then I quote more from rules and regulations. But CLOCA states that not all fill can be inspected to be safe. Therefore, when the Sewell commission followed Kanter and the Crombie commission and its findings are supposed to be used now, we are distressed.

Development 1, 2, 3 of the comprehensive set of policy statements.

The new treatments of corridors, hazard lands and river valleys proposed in Understanding Ontario's Planning Reform, "New Planning Legislation," pages 9 and 10, to give methods and measures for mitigating such impacts. That is directly against what has been found out in Regeneration.

I state again what the Municipal Act, under section 223.1 states: soil to be dumped, dumping of fill, or alteration of the grade of land. That's against Regeneration.

Out of our experience, we know that of these will be abused.



I went to a CLOCA meeting, with its councillors present. Even though the director of the authority gave its findings, the planner was also against part of this development in an area you would call corridors, along a meandering creek valley with a wet meadow. That's why we deferred it to the OMB. The authority council, as a whole, voted for the development. This development will need at least three or four ponds to pick up the extra storm water, and the lower creek shows heavy signs of erosion already, before development. Eventually, in a mediation hearing, we won back some concessions, but our lawyer did not cross-examine the authority people because of fear of repercussions.

**Ponds:** In Whitby, because of its topographical situation, development cannot take place without ponds any more. These ponds, with their sleeping dangers, are mentioned veiled only and seldom in Understanding Ontario's Planning Reform and the comprehensive set of policy statements.

In a given situation, two newly developed ponds in Whitby were not working properly. They could be deadly, because they became old-fashioned open sewers. They could produce leptospirosis, called Well's disease, caused by a virus coming from rodents. Dead rodents were found in these ponds. I have a copy of a letter to Robert Short, director of planning, Whitby, from the MMA, by Milena Avramovic, about this. She asked for pursuance of this matter, but ponds were not mentioned in the new recommended official plan for Whitby either.

Since part of southern Ontario is situated under the Oak Ridges moraine on sloping grounds, ponds are of importance to mitigate heavy runoffs and should have recognition and procedural bylaws. These runoffs are increased through development by per cent impervious water runoffs from roofs and parking lots.

**Wetlands:** We know our Lynde Creek marsh and wetlands are a lost cause, because in spite of our OMB deferral, we were told that since the big Ruth Grier has waived an environmental assessment for the area, what did a small Suse Eggert think she could accomplish? We were forced in a friendly way to withdraw.

Reading all new statements on environmental safety and special preference for class 1 wetlands of Ontario, even though most of our wetlands are located on government lands, we should have had a chance to receive at least the 120-metre setback required as a barrier between the marsh-wetland and the developments. Hazard lands along the marsh are planned to be altered with acceptable engineering techniques—you know those—also low-hazard lands called ditches. I was invited to see one of the ditches, but after the heavy rains nothing materialized.

These places are not included in the amendments. They are waiting for that still. Since we have been objecting from the start, never giving up, in word or writing, on hazard lands, we feel you should have different bylaws for these situations, because your findings state also that this will have to be protected.

Since in some cases the public did not have a chance to object, no public meetings, or we did object to the use of hazard lands, it is not fair to use this section with everything lumped together under one umbrella.

**Institutional land uses:** Whitby residents were told never to stop on the roads around the mental hospital to pick up people, as a safety precaution because of murders and many other unsavoury matters. These lands around the hospital and marsh-wetland areas are supposed to pick up 6,700 new habitants now, including small children. How does this compare with the safety measures for people proposed in the comprehensive set of policy statements?

In our second try for an OMB approach, we proposed school development or any other kind where nobody stays after dark along the marsh and the mental hospital. Everything was declined, but the comprehensive set of policy statements seem now to see it as we did—and do still. At the time we were convinced not to pursue the matter.

How can this negative, outdated, dangerous, government development approach happen today, in spite of all new approaches written for today now? Who will be held responsible in case of disaster? Hopefully, not the taxpayers of Whitby.

By the way, we would like to know the continuances of these newly planned sections to the divers acts, if new governments will come and go in the length of time. Will there have to be a new reworking, as this one, or can a new government negate all new sections? Or is there a set time limit for reworking of the acts? You see, in spite of our complaints, we do appreciate some of the new ideas.

Also, it is stated that under the OMB act there is a prescribed fee one has to pay at a deferral. We have paid for everything else, but did not pay a fee for an OMB hearing. Is this new, and how much would this be? In the case of the environment, a fee would surely discourage people to come out either to help us or to do something on their own.

Environmental impact studies, developments 1 and 2: These should be done only by independent recognized companies picked from a government list and not paid directly by the developer. Preferably two studies should be done, and then the medium between the outcomes of the two should be picked. Our survival and that of future generations to come is too important.

**Built heritage resources, cultural heritage landscape and intensification:** Unfortunately, the intensification idea, which is good where there is room for it, is now planned for downtown Whitby. It seems that the little of Whitby's identity left after experiencing the tearing down of many of the oldest buildings of the district is planned to disappear for downtown also. Not just new houses around old buildings with the same height and exteriors are planned—no. New and higher ones are planned, instead of our heritage. Heritage is to be torn down.

There again one can see how new, well-intended ideas can be abused. Some sections of the comprehensive set of policy statements urge the safety and protection of heritage, but we did not see enough sections in the new act to prevent what I just described to you. The new recommended Whitby official plan wants to give bonus provision bylaws. For doing something good at another site, they want to give the developer the right to high-

risers instead in town, get rid of our heritage.

Areas of natural and scientific interest, ANSI: Whitby used to be known in the scientific world as the land of trilobites. Our son found this out only in Alberta, after 30 years living in Whitby, at Drumheller's Tyrrell museum. These Whitby shale formations were mainly destroyed by boulders propping up the shoreline at the mental hospital in Whitby. They come down from the Collingwood-Georgian Bay area, underground, and surface along the many arms of Lynde Creek and mainly at the mouth of the Lynde. Now there are so few of them left that it was thought to give these Whitby trilobites a different name. This coverup is not fair. We should try to save our oldest ANSI heritage. Scientists use them for research in the development of plant and human life on our planet, and most likely for the different ecosystems now.

Since the invitation to this hearing stated that you were interested to hear what environmentalists have to say about this new legislation, we hope that you will listen somehow and that there is still room and time for some changes. We believe strongly that it is everybody's duty to save our environment for us and future generations.

**The Chair:** Mrs Eggert, unfortunately there's no time for questions, but I want to congratulate you for your activism and wish that it will endure for a long, long time. Thank you for coming today.

**Mrs Eggert:** We did have quite a lot of success in spite of everybody against the environment.

1050

#### CHRIS SMITH AND ASSOCIATES

**The Chair:** Mr David West is here from Chris Smith and Associates.

**Mr David West:** My name is David West. I have a master's degree in urban planning, just as a background, although I'm not currently working in the planning field. I'm currently working as a consultant in the field of non-profit housing, and I've been in that field for over 10 years. We have worked in Durham region, York region and Metropolitan Toronto. Working as a consultant in this field with cooperative and non-profit housing groups, we have experienced a great variety of situations involving our development applications and the planning process in a variety of municipalities.

As you can imagine, many of these situations have been negative, because not only are we struggling with the planning approvals process, we are often fighting a NIMBY attitude in the community as well as stick-handling through the Ministry of Housing at the same time.

This presentation will be short and represents the thoughts of a few of us who work in the field of non-profit housing in the firm I work with.

We wish to express support for Bill 163 and all the hard work undertaken by the Sewell commission. In our opinion, the bill is definitely moving in the right direction and addressing the right issues. We speak largely from experience.

Some of the main issues we see it addressing are: the length of time for planning approvals. One of our projects, and we know we're not a special case in any way,

took four years to work its way through the planning system, and this was not a complicated subdivision but simply a simple town house development. We know it's not unusual for development applications to take several years to complete. It often seems there is no accountability on the part of various jurisdictions to deal with applications in a timely manner, so the direction of the bill in creating time accountability we think is moving in the right direction.

In regard to the environment, we support the bill's efforts to integrate environmental matters into the planning process.

With respect to integration and coordination in the planning process, we think again that's a major issue that's being dealt with in the bill. We have experienced, more than once, significant delays when various levels of jurisdiction and provincial ministries are involved in the same project. In many cases, each of these has a different and perhaps conflicting agenda.

We support the setting of strategic goals by the provincial government as long as these are clear, enforceable and followed up.

We support giving municipalities greater control and responsibility in the planning process. But a slight note of caution: Because of the type of business we're in, we're not always welcomed with open arms in a given municipality or by a community or even by planning staff, who may not want non-profit housing in their community for some reason. Does this mean we will always end up at the OMB? If a municipality has no land for medium- or high-density housing suitable for non-profit housing, or, as in other municipalities we've had experience with, where the cost of land is too expensive for non-profit housing, does that mean that municipality will always be able to shut out non-profit housing developments? We have experienced that.

So in general we support the thrust and the direction of Bill 163, and we ask that the province be diligent and persistent in making it effective and fair.

Some more specific comments on the housing policies:

Again, we support the housing policies that are related to Bill 163, because these are moving in the direction we have been moving in for some time, such as:

—Intensification and infill. These kinds of sites are often very valuable to non-profit housing groups.

—A more compact and less costly urban form.

—A greater variety of types of building form and density mix. We feel there's a great deal of creativity in the architectural and development industries that is not being used effectively because of zoning bylaws or development standards or whatever.

—More efficient use of land.

—Less costly development standards.

We support the more specific housing policies because we believe they will result in a more balanced community, more efficient use of resources, and provide a greater range of housing types, tenure and affordability, including non-profit housing, which we feel is important. We feel these housing policies will help to create a fuller range of



housing and also, specifically, the 30% affordable housing is obviously moving in a direction we support, half of it to be geared to the lowest 30th percentile of income, which is currently missing from the old provincial housing policy.

With respect to the province's role, Bill 163 reduces the direct provincial involvement in planning decisions. However, we feel the province needs to be diligent in clearly defining its policies, monitoring and enforcing these policies, ensuring that municipalities interpret the policies consistent with the provincial intent, and should play a role in integrating and coordinating the policies.

As an example, will the Ministry of Municipal Affairs or some other body take a lead role in coordinating approvals where more than one ministry or more than one jurisdiction is involved? We're sure there have been countless cases where development applications have spent months and years caught up in a quagmire of overlapping levels of jurisdiction. It is often up to the proponent to follow their application through a maze of bureaucracy. The setting up of planning teams within the bureaucracy has been successful in dealing with this issue. Some municipalities are starting to do this.

In the municipal role, we support the requirement that municipalities have official plans. In some respects this is a bold step forward because it forces municipalities to spell out their plans and not to handle planning matters on an ad hoc, "Let's make a deal" basis. Perhaps this runs counter to the notion that many people and even many communities still hold that an individual has the right to do whatever he or she wants to do with their property, that it's their absolute right to do anything they want, whether the community agrees or not.

**1100**

This is a noble goal, but it will take some time to put into practice the process where most of the discussion and perhaps controversy occur at the policy and official plan stage rather than at the development application stage. We think this is a good intent, but it will take a lot of working out. Most of us seem to react when we're faced with something real, a real development application across the street. The key is to streamline the process so that all those affected can be heard and timely decisions still made.

We support the goal of clearer, more consistent and well-defined official plans. Without this, the proposed system doesn't work very well. Official plans need to be more detailed and act as a lead document. We support Bill 163's efforts toward more open local government processes.

**Legislative changes:** A number of time lines are proposed in the bill. For example, the time lines for OPAs and plans of subdivision seem somewhat optimistic, but they are good goals. We strongly support the requirement of all parties involved in the planning process to respond in a timely manner. However, the bill is not clear, or at least what I've read is not clear, about what happens if those time lines are not met. Is there a consequence? We think it should be clear about the consequences of not responding or acting within a specified time period.

We support the proposal that municipalities let planning approvals lapse if they are not acted upon within a specified time period. Unused planning approvals can tie up sewer allocations or other resources, or simply be no longer relevant in the municipal context if not used for several years. But I do think there has to be some flexibility in that the time period relates to the magnitude, perhaps, of the project. It seems unclear whether the bill leaves this at the municipality's discretion or whether it is a requirement, and whether there is any appeal or review process which could be created.

We strongly support a clear and fair system for parkland dedication. We also wish the planning process to be fair in terms of contributions from the development proponent regarding cash or work-in-place contributions to the municipality. Municipalities should be fair and not take advantage of their approval authority.

**The OMB:** We strongly support a more streamlined OMB process. More than once we have waited several months for an OMB hearing date and then months again for a decision. The OMB should be required to adhere to reasonable time deadlines. OMB hearings need to be shorter, less formal, less legalistic, less costly, and less arbitrary, and by that I mean subject to the whim of any objection whether it's valid or not. At the same time, ordinary citizens should not feel intimidated by the OMB process or shut out because it's too costly to participate. If possible, OMB hearings should be held at convenient locations close to the site in question.

The OMB should make clear and fair decisions based on planning matters. If the OMB's scope of decision-making is to be expanded, this needs to be made clear and proper accountability made for it. By this, we mean we have experienced recent decisions by the OMB that made reference to matters that we did not think were planning matters, such as the suitability of a site for social housing or low-income people, or, in another case, where a decision was made on the basis that a project was economically viable at a smaller size than was originally intended. These are not strictly land use matters and they seem to us beyond the OMB's jurisdiction.

In conclusion, we support the general direction of Bill 163 and its concrete steps towards making planning more timely, more accountable, less cumbersome, less costly and more what it should be, namely, a way to plan the urban fabric of the province with a vision and a strategy.

**Mr Grandmaître:** Mr West, you say you approve of the housing policy of the government and also the time frame. Now, we've heard differently from different groups, that they don't agree, especially with the time frame. When you go through the comprehensive set of policy statements, housing policies, where in this policy do you see a favourable turnaround for non-profit housing in the province of Ontario with this new bill? You say it's adequate, that it will give municipalities more power to provide more affordable housing. You're a consultant, if I'm not mistaken, in non-profit housing.

**Mr West:** Yes.

**Mr Grandmaître:** Where do you see in this bill the policies that will provide more non-profit housing or the opportunity to provide more non-profit housing?

**Mr West:** There's a general and there's a specific. The general is that if it's one of the policies the Planning Act has to have regard to, it then means, I would assume, that municipalities have to have regard to it. As I said, all the policies in the housing section are things we would support and would go along with the creation of more non-profit housing. It would mean a greater variety of urban forms and urban density, but there is also a very specific part there about the 30%, and then half of it being geared specifically to what's called the lower percentile of housing, which was actually taken out of the provincial housing statement that's currently in effect.

1110

**Mr Grandmaître:** But it refers to affordable housing. "In the case of smaller sites where only one project can be accommodated, the opportunities will be for the development of not-for-profit housing."

**Mr West:** But that's government land; you're in the section for government land.

**Mr Grandmaître:** So you think Bill 163 will provide you with the necessary tools to provide more non-profit housing?

**Mr West:** It provides the tools; it doesn't provide the will. If there are tools to work with, if there's a policy that is related to the Planning Act and the act has to have regard to it so the municipalities have to have regard to it, what I'm saying is that we can, as a non-profit housing consultant, say to a municipality, "We think you need to help us create more opportunities here," and if we have a specific development application, they can have regard to the policy as a way of fulfilling their mandate in creating more housing.

**Mr Curling:** Let me just follow up on that. As a matter of fact, when I see the government presenting this and it says at the top of it, "Comprehensive Set of Policy Statements," and says housing policy is a comprehensive policy statement here, this is not comprehensive, really, about housing policy. I think what the government is dealing with here is more or less what they call affordable housing, at a certain level of income, providing housing for those people.

My colleague asked you a minute ago. As you know, statistics and some of the studies have shown that social housing is costing more to build now than in the private sector. Do you find it that way too? I know one of the factors that causes increased costs is the delay, what they're also suffering from too, which they were screaming about a long time. Do you feel that if all this red tape, or what they call redline—the fancy name they're giving it—all the bureaucratic delays is eliminated, it will bring it much cheaper on the market if these things are eliminated from the production costs?

**Mr West:** If the process is more streamlined, do I think non-profit housing would be less costly? The simple answer is yes, just because in any business, time is money, and the more time things take, the more costly it is, in two ways. One is just the manpower that has to go into it, but the other factor is the land component. The longer the planning process takes, in a sense, the more costly the land is.

**Mr Curling:** Isn't it the same cry the private sector is saying too, that that's what is causing the cost of housing to go up? If that is dealt with, do you see the necessity of having a separate group of people building social housing or non-profit housing when the private sector could provide it on the market at the same price?

**Mr West:** I can't agree with that totally. It will bring the cost of housing down in the general sense, but non-profit housing is geared to a specific market, which is people who can't afford it. There will be more people at the upper end or the middle income who could then perhaps purchase, but you're still going to have people who cannot purchase.

**Mr Curling:** The fact is that here we are then, we have two builders in the system: the non-profit and the private sector. But hidden costs, basically, is a supplementary part of it, where the other ministries support social housing. Do you feel that if we resolve all of that—again I'm going to ask—would it necessitate having another sector building non-profit housing or could the private sector provide it at that market level? That's what it's all about, that the private sector will gear it to the market and build homes accordingly.

**Mr West:** That's a big question for me to answer. That's part of the whole global discussion about whether there should be any non-profit housing at all. I think what you're saying is, could the cost of housing be brought down far enough that you wouldn't need to build non-profit housing at all.

**Mr Curling:** No, I'm not saying that. I'm just saying—

**The Chair:** Mr Curling, if we do that, we won't have much time left for the other members. Mr West, do you want to try and answer?

**Mr West:** I think it's too big a question for me to try to answer.

**Mr McLean:** My question is to do with the plans. You said, "Official plans will need to be more detailed and act as a lead document." Do you believe there should be two-tier government in official plans, that the lower tier has an official plan and the upper tier has an official plan too?

**Mr West:** I guess I would answer that from a more personal perspective, and in that sense I would say yes. But I'm not answering on the basis that I'm a non-profit housing consultant, I'm just answering on my own.

**Mr McLean:** But you say in your brief that you think it should be more detailed.

**Mr West:** I talk about that simply by the direction of the bill. If the bill is saying that official plans are going to be relied on more to provide the framework for development decisions to be made at the local level and that there won't be as much decision-making or monitoring going back up to the provincial level, it would just seem logical that you would need to have official plans that are very clear as to what this municipality is going to look like or what direction it's going in, in order that you're not going to hassle with development applications and go over the same ground all the time.

**Mr McLean:** The bill states that the lower tier must



be the same as the upper tier, and the upper tier is the one that will make the decisions, not the lower tier, so to speak.

You talked a little bit about a fair system for parkland dedication. How could it be more fair? There's an alternative now: They can take it in parkland, whether it's 2% or 5%, or they can take cash in lieu. Are you saying you don't believe the cash is proper, that there should be more parkland provided?

**Mr West:** No. In one of the documents or reports I read there was this issue of double charging, and sometimes municipalities seem to ask for more than just either 5% or cash in lieu. You feel like you're over a barrel, like you're being held up for ransom by a municipality or some other jurisdiction. That's all I'm getting at, that we think it should be a very clear and fair system in dealing with the municipality on parkland or any kind of contribution to the municipality: "Build this and we'll approve your application," or "Include this in your development and we'll approve your application," that sort of thing.

**Mr McLean:** Briefly, just what is your definition of non-profit housing?

**Mr West:** My definition of non-profit housing, because of the field I work in, is fairly specific. We deal with CMHC and the Ontario Ministry of Housing in building housing developments within their programs, so that's my specific definition of non-profit housing.

**Mr McLean:** Non-profit housing: Is that for people who can't afford their own home, their own apartment?

**Mr West:** When you talk about non-profit housing, there are people who cannot afford their own home but can afford to pay what we call the market rent or the going rent, but then there are other people who cannot afford even the market rent in the community.

1120

**Mr McLean:** What's it cost the taxpayer a year to subsidize non-profit housing?

**Mr West:** In the whole global sense? I don't know.

**Mr McLean:** It's about \$954 per home, and it's almost \$900 million a year now.

**Mr West:** But the thing that I think many of us forget is that, in a sense, over the course of the mortgage of each of those non-profit housing projects you're building equity, you're going to have something at the end of the day, whereas in other forms of subsidization you don't have anything at the end of the day, you're just paying out money all the time.

**Mr Drummond White:** Thank you for your presentation. There are many points you are making in terms of the value of non-profit housing and the comprehensive set of policy statements with regards to housing.

You are primarily involved, Chris Smith and Associates, in the development of co-ops, though. Certainly in my municipality there have been some excellent developments and a range of different kinds of developments: the Pringle Creek co-op; the one on Ash Street, the Marigold; and the Otter Creek one. They're all quite different in nature: The one in the Otter Creek area tends to be primarily a sort of infill, housing intensification, another

is an apartment, another is a town house development.

There's no specific mention in the housing policies of the distinction between co-op and other forms of non-profit. I'm wondering if you can comment on that a little, whether that will be helpful for the co-op movement, and, second, if you can comment on any specific problems you've run into in the development of communities, which co-ops of course are involved in, at the same time as you're looking at a land use application.

**Mr West:** With your first question, whether there should be any specific reference to co-ops in the housing policy, it simply would be nice, as a matter of recognition, but I don't think it's absolutely necessary. It is a form of non-profit housing in the legal sense. Other than the fact that it would be nice to have it recognized as different, I don't know whether it has to be in there. It would be nice, is all I'm saying.

The second question was related to what have we experienced in municipalities, the problems we have come across?

**Mr Drummond White:** When you're developing a community at the same time as you're developing a land use application, a site application, I wonder if that would not cause some problems.

**Mr West:** The biggest problem we run into, and it's common to most non-profit housing applications, is reaction in the community, and it's usually based on total misinformation, meaning that people tend to associate non-profit housing or co-op housing with Ontario housing. I don't want to run down Ontario housing, but it doesn't have the greatest reputation. The new non-profit housing and co-op projects that are being built now are all mixed income, but there's an automatic reaction in the community to one of our applications coming in. As much as we try to provide clear, up-to-date information, it doesn't always get through to people. In the case of Otter Creek, it is a beautiful project and I'm sure two years from now everybody will have forgotten the big reaction there was to it.

**Mr Drummond White:** It's just a matter of education.

**Mr West:** Education, and I think the housing policy takes steps to recognize non-profit housing.

**Mr David Winninger (London South):** Thank you for your presentation. I was going to ask you initially whether you thought the changes to our legislation and our draft policy statements went far enough in encouraging the growth of non-profit and co-op housing, which you have considerable expertise in. You may wish to answer that, but since the members of the opposition raised the issue of social housing and non-profit housing and how cost-effective that is, I thought I might put another question to you as well.

It seems that the more successful our non-profit housing program is and the more jobs and enduring accommodation it creates, the more valiantly the opposition members attack it as being not effective, either in terms of cost or government funding. I think you quite properly pointed out that as the main cost, which is the mortgage, comes down over the years, you're left with an

enduring asset, and the cost compared to comparable private sector accommodation is very competitive, if not lower.

But there's another aspect to co-op and non-profit which hasn't been addressed, that it creates a more inclusive and integrated neighbourhood for housing. I wonder if you could comment on how non-profit and co-op housing also help to serve the kinds of objectives which are detailed in the policy statements, such as residential intensification, compact development, environmental protection and so on. Is that too broad?

**Mr West:** It's pretty broad. Are you asking me whether the policies promote co-op housing?

**Mr Winninger:** That was the first part of the question. The second one was, how are these policy statements and changes to the legislation served by the growth of non-profit and co-op housing?

**Mr Grandmaitre:** You can't give him the same answer as you gave me.

**Mr Winninger:** You don't have to. His question was ideological.

**Mr West:** The legislation and the policies, as they're stated there, as I said before, are moving in the same direction that we are moving in. You could always say that they could be more aggressive—whether that's politically saleable, I don't know—by just having municipalities be required to provide more non-profit housing or a fair share of non-profit housing. I think that's been the intent with the original provincial policy, going back to what I call the 25% policy, but I'm not sure it actually has in fact happened. I know there are certain municipalities that just shut non-profit housing out altogether.

The community aspect of non-profit housing is one of its strengths, especially with co-ops. To me, housing co-ops strengthen a community by creating a community within a community. That's a strength to the residents. We find that for people who move into co-ops, and I'm using a generalization, it's a very empowering type of experience in that it helps them get back on their feet in many ways, not only by participating in the activities of the co-op but also just by having a supportive community. They are then able to get their lives together and often will go on to other things. I'm not sure I answered your question, because I'm not sure how to answer that last part.

**Mr Winninger:** My time has run out, so that's okay.

**The Chair:** Mr West, thank you for taking the time to come before this committee and thank you for participating in these discussions.

1130

JIM McKEE

**The Chair:** We invite Mr Jim McKee. Welcome.

**Mr Jim McKee:** Thank you very much. I've got good news for you folks. I'm not going to talk for very long.

**Mr Curling:** That's bad news. Those guys will talk longer.

**Mr McKee:** I'm not a builder. I'm not in the real estate business. I'm a retired pensioner, a resident of Ontario, and my concerns really centre around the

environment and the rights of property owners.

Everyone has a responsibility to protect and enhance the environment. That much is a given; I don't need to say any more about that. My concerns are for the interpretation of the policy, the rights of property owners and the need to pay the cost of downloading and distributing responsibility between two levels of government.

As I understand it, the Ministry of Natural Resources has been responsible for identifying properties that require environmental protection. They have the expertise. The municipalities don't. Will some of the people in the municipalities be given this training, or will some of the trained ministry people be transferred to the municipalities? What's the advantage of dividing this responsibility between two levels of government?

I don't have any expertise in these things, so I'm asking questions, really, more than answering them.

Page 1, paragraph 1.2 of the policy statement, reads, "Development will not be permitted in significant ravine..." etc, etc. You folks are very familiar with it, I'm sure. The words "significant," "vulnerable," "endangered" and "threatened" pop up throughout these paragraphs, and these are judgmental terms that are subject to widely different interpretations. Is there a danger that some overzealous crusader will declare a property significant for some marginal reason and create a need for an environmental impact study? And if so, who's going to pay for it?

Have all of these provincially significant properties been identified? A lot of the wetlands have, I know. Categories 1, 2 and 3 have. But what about all the properties that may be classified as significant because they're found to be a habitat for a rare bird, animal, some flora or fauna? If they have not been identified, when will they be identified, and how many might there be? And how will the property owner be notified?

Is it conceivable that a person could buy a property tomorrow with the intention of building a house on it and then be denied the right to do so because the land is subsequently classified "significant"? If the property owners lose their right to erect a building on their property, the property is of little value to them or to anybody else. Will they be compensated for their loss of market value?

Will all of these protected lands qualify for 100% property tax rebate? To what extent will this loss of tax revenue impact municipal governments? If all the tax is to be rebated, why not exclude it from tax instead of playing put-and-take with it?

Page 2, paragraph 2.2 of the policy, says all jurisdictions "are encouraged to protect other wetlands that are not" classified as provincially significant. I assume that protecting these other wetlands means denying the right to build on them also. Why are there two levels of government involved in making the decision that these lands require protection?

Page 11, paragraph 2(a) reads, "Opportunities will be provided for no less than 30% of new dwelling units created through development and intensification to be affordable housing." As well intentioned as this may be,



we simply can't afford it. We can't pay for what we have now. Spending has to be reduced, not expanded.

Bill 163, under disclosure, page 99 of the act, reads, "All documents in the register are public documents and may be inspected by any person upon request...." There's a need for conflict-of-interest controls, of course, but this seems like a bit of overkill and may very well scare away the best-qualified people from seeking office.

In conclusion, let me say again that we all need to sacrifice something to protect the environment but, if I'm reading these documents properly, this act confiscates the rights of property owners. The value of a property is greatly diminished if the right to erect a building on it is denied. If this denial is necessary, the property owner shouldn't have to bear all of the cost. All of society should contribute.

The cost of producing these three documents and the others that will flow behind in the municipality, holding public meetings to inform the public and the cost of retraining municipal employees has to be quite significant when viewed in today's economic climate. I don't have all the facts, so I can't make an informed judgement, but my gut feeling is that this is not the time to be spending this much money. That's it.

**Mr Villeneuve:** Thank you for your presentation. I represent a riding with 23 municipalities, and the average population is 2,500 per municipality. You've touched on one of the most important problems they've brought forth: the designation of wetlands. It's effectively turned into being expropriation without compensation, and property owners' rights have been effectively steam-rollered.

We fully agree that wetlands are important. However, in the part of eastern Ontario I represent we have tremendous amounts of wetlands, some of them natural, most of them created by beaver. They are turning the situation into a very, very anxious one for land owners.

One of the previous speakers said that the wetlands in this area are primarily owned by the crown, with some individuals owning some wetland but that the majority of wetlands is owned by the crown. Is this your experience?

**Mr McKee:** Not in Fenelon. I live in Fenelon township and that's certainly not the case there. Most of them are owned by private land owners.

**Mr Villeneuve:** You're saying there should be no tax assessment on these wetlands, and presumably the buffer area also because the buffer area is considered the same as wetland.

**Mr McKee:** That's right.

**Mr Villeneuve:** Where would the tax base come from in these small municipalities?

**Mr McKee:** Precisely. That's it.

**Mr Villeneuve:** We haven't got that one answered either. It's a dilemma.

**Mr McKee:** It's much more here than wetlands. Any land that is considered to have some rare bird or any form of plant life can also be declared environmentally protected. For instance, in talking to a planning member in Fenelon township, Victoria county, he spoke of one

location where there's a rare orchid been found in Ontario and another location where a rare woodpecker's been found—I can't name either one of them—so they want to protect those lands as well.

You can buy a piece of land today and it can be found to have some rare species of whatever, an endangered species, over and above wetlands, and then have your land declared ineligible to erect any kind of building on it.

**Mr Villeneuve:** As class 1, 2 or 3 wetlands, and seemingly with very little option for the land owner to reverse that.

**Mr McKee:** That's right.

**Mr Villeneuve:** We have a major problem with that in our area. On a task force I was co-chair of, the rural economic development task force, that was the primary concern of people who made presentations. I'm glad you touched on it. I think the Sewell report emphasizes the importance of wetlands without giving any recourse to the rights of property owners, and I think that's a travesty.

1140

**Mr Gordon Mills (Durham East):** Thank you for coming this morning. I made a note when you were speaking, and you said, "Affordable housing: We can't afford it." Right now the province of Ontario is paying out \$2.5 billion a year in shelter allowances, so if we can't afford affordable housing and we're affording shelter allowances to the tune of \$2.5 billion a year, wouldn't you agree it makes more economic sense to build the houses, pay off the mortgage and provide the housing a lot cheaper? In fact, I think there is some affordable housing on the market now that is costing the taxpayers about \$280 a month because the mortgage is paid off. I'd just like to know your comments. Is \$2.5 billion affordable?

**Mr McKee:** These kinds of numbers confuse me. I can only say that anything I've ever read about any government-operated business has not satisfied me. Talk about the Workers' Compensation Board, or Unemployment Insurance, or Canada pension plan, or affordable housing, or non-profit housing, all of these things: The auditors get in there and they find they're a complete disaster. I really think the private sector could do a much better job.

People in need need to have adequate housing. We're a civilized society, we don't like to see people on the street, but there's a better way of doing it, I think, than all these non-profit housing arrangements.

**Mr Mills:** I'd be so grateful if there were no disasters in the private sector, and there's lots of them.

**Mr McKee:** There are some of those too, of course. Not as many.

**Mr Ron Eddy (Brant-Haldimand):** Thank you for your presentation. There are several matters we should take some time to discuss, but your views on affordable housing are certainly—I would say we need to do it much better than we're doing. It's as simple as that. I've been talking to my friend here, who's a former Minister of Housing and would like to have made some changes

probably, but his tenure was somewhat shorter than he counted on.

*Interjections.*

**The Chair:** Order, please.

**Mr Eddy:** He says that we do arrangements like rent-to-own with so many other things, why not do it with public housing? But we need to do it better than we're doing, and you're right on what government does when it get into business: It doesn't turn out quite the way it's planned initially. Government needs to be in the policy field but not in the service field to the extent we are.

You mentioned the property rights, and you're so right. With a significant wetland or something, you know when you buy the property that it's useless from a development point of view and you won't be able to develop it anyway. It's finding out afterwards and the changes that are made, that all of a sudden you're robbed of your rights. That's where the big problem is, and of course it happens in many areas. Also, the floodplain mapping in some places is incorrect; later it's found that the mapping is incorrect. I appreciate the views, and I think we have to do that much better.

And we must save the wetlands, more than the significant wetlands. Developers must be required to save it. When we find something rare, endangered, it's got to be saved, but we have to have a mechanism to deal with the property owner and convince them to work with whom-ever, and compensate in some way if they require it. You're right about that, and I appreciate your views very much.

**The Chair:** Mr Hayes is going to make a point.

**Mr Hayes:** Thank you, Mr McKee. From the comments being made about the way things have been with MNR, I can certainly understand your feelings, but this piece of legislation is turning that around. What has happened is that landowners were not consulted properly at all, and other authorities came in and designated areas. Now, with this legislation, there's going to be a consultation and the landowner is going to be one of the first ones to be noticed. The Ministry of Natural Resources will be setting the criteria and the local municipalities can be doing the designation. Also, MNR people and our ministry are even talking about going back and looking at some of the designations. It's certainly going to be a lot cleaner than what you've been dealing with in the past, I can tell you that.

**The Chair:** Mr McKee, we thank you for your submission and for taking the time to come before this committee.

Given that there was a cancellation this morning and that we have approximately 13 minutes, I want to ask a question in general. Is there someone in the public who would like to address this committee? One person? All right.

JOY WAWRZYNIAK

**The Chair:** What I would like to do is to give you five minutes to give your views to this committee. Is that acceptable to you? Okay. Please come forward and tell us who you are and then begin.

**Ms Joy Wawrzyniak:** I want to thank you for this, as

I didn't know the procedure and I didn't know I should have written ahead or phoned ahead to get my name on the agenda. I'm learning.

**The Chair:** The committee puts advertisements in all the dailies and it's from those we get the submissions from the people we've heard today. Of course, some people missed them, for a variety of reasons, but given the cancellation we thought we could fit you in, and that's what we did.

**Ms Wawrzyniak:** Thank you. First of all, I'm glad to see you here in Oshawa. I do follow a lot of these things in the paper and—

**The Chair:** Your name, please.

**Ms Wawrzyniak:** I'm sorry. Joy Wawrzyniak. I live in Oshawa and I notice that quite often Oshawa is passed by, so I'm glad to see that you're here in Oshawa today. It's much more convenient for the people in the area to come and attend locally.

**Mr Hayes:** Thanks to your local members.

**Ms Wawrzyniak:** I would just like to point out that I've come across something in the last year that is very important to our group. We found a need just at the end of last year to form O'Neill Community Ratepayers' Association and to become incorporated. We will be going to the Ontario Municipal Board because there is a very important, we feel, hearing coming up affecting land planning.

I would just like to stress that what we're finding is the need for intervenor funding. The parties involved are both large and publicly funded, one being the hospital, one being the city and the region. We're just finding that as everyday taxpayers we are definitely at a disadvantage in being able to present a case on a level playing field to get all the issues addressed. I would just like to mention that here today. I notice that was eliminated. It's not in Bill 163, and I'm very disappointed that it was taken out. Yes, it was in the Sewell commission, in the book *New Planning for Ontario*.

The other thing I'd like to mention is the need for more policy and that it be enforced, that the city official plans and the regional official plans be reviewed regularly. In the Planning Act it mentions that they should be reviewed every five years, but what I'm finding is that in fact very seldom are they ever reviewed in the five years and quite often they go quite a distance beyond that.

In this particular case we're looking at, we have an official plan of the region which is fairly up-to-date and very good, but we have a city official plan that is very lacking in many areas. So now what we've got is the powers being transferred, more power to the municipalities and the lower tiers, but they're not yet in a position to fulfil their mandates because their plans are so outdated. There's a real gap there.

One example I can give you is intensification. In the Durham region official plan, 20% that has been allocated through future development is to come from intensification. If you go to the city plan, intensification isn't mentioned at all. In fact, hoping I would find something in their municipal housing statement, very little is even mentioned or addressed in the housing statement itself.



Intensification is very important: as we've discussed here, affordable housing. One of the main reasons for intensification is that it has been determined that it is far less expensive if a home owner were to put a small apartment, an accessory unit, into his house, rather than the cost of building one subsidized unit in affordable housing. It's clearly a good direction to go, but the policies are not yet in place. And I realize there's always a transitional phase.

1150

The other area that concerns me: Why we're going to the Ontario Municipal Board is to try and protect parkland, and the allocation for parkland has not been mentioned. I can only think that is remaining the same: Under the Planning Act, I believe it's one hectare per 300 dwelling units, and under the OPs they can either accept that as a measure or go to units—I'm not sure, it's left me, but they figure it out differently; I think it's per acre or per hectare per number of population.

When you've got areas of quite mixed densities, apartment buildings mixed with single-family houses mixed with row housing or what not, it becomes very complex to try and figure out. What is happening is that now we have intensification coming along on top of that and no additional parkland requirement has been allocated to support intensification, while in the regional plan we've said 20% has to come from that. So we are in fact sometimes at risk, for one reason or another, of losing existing parkland, while there's no requirement in there now to raise our parkland requirements due to things such as intensification.

I would just like to submit something to you, and this is my last comment. I think Bill 163 is great. The purpose of the bill, right at the front, is to make the planning more understandable, accessible, open for everyday Joes to try and understand where we are and where we're going, to go down to get involved locally, when they have the open forums, to go see what your block is zoned, to become involved. I just started with one little thing and I'm building on that. I think that is excellent, and don't let the policies be watered down.

Here we have a case where the official plan has been approved for Durham region and now, just yesterday, we are fearful that an amendment is being put through and that it will be watered down. We will be objecting to that.

I just want to say that I think the direction you're going is excellent. Thank you for giving me the time.

**The Chair:** Mr Hayes has one remark to make with respect to something you mentioned.

**Mr Hayes:** Just a quick clarification: On the issue dealing with the parkland, that is still in there. The only thing that changes from that is the part about disallowing the double charging to developers. It's there. We haven't completely changed the whole act; there are pieces in the previous act that will stay in this act. It's just not stuck out in front of you there, but it is there.

**Ms Wawrzyniak:** The basis as in the Planning Act, the level of parkland, is the same, is that correct, the 5% or the one hectare per 300 dwelling units?

**Mr Hayes:** Yes, it hasn't changed.

**Ms Wawrzyniak:** What I'm saying, though, is that that is staying the same, it's not being increased, but on the other hand, we're having perhaps an increase in our parkland needs because of intensification, for example. That's what I would like to stress here today.

**Mr Hayes:** I hear you.

The other part is about the intervenor funding. There was a reason, because people felt it shouldn't be an adversarial type of situation. The other thing is that people themselves, the public, are going to have input right at the beginning rather than after the fact, which is the way the situation has been, so that will be changing. And we figure they can certainly negotiate or work things out by sitting down and being up front right at the beginning, and that should take a lot of the—

**Ms Wawrzyniak:** Are you talking about as the plan comes through?

**Mr Hayes:** Yes.

**Ms Wawrzyniak:** Because there are certain things. This application right now was open to the public process and we did that, but, for one reason or another, we don't agree and we feel it hasn't been looked at factually and now we are going to the Ontario Municipal Board. We're having a difficult time, coming out a recession and that we're in one of the older, stable areas of Oshawa. We have a lot of pensioners, a lot of people on fixed incomes, and they just cannot afford to give very much. You could use up, I don't know, \$10,000 in one day at the OMB hearing to try to present your case. We're finding it a real disadvantage.

**The Chair:** Ms Wawrzyniak, we thank you for showing interest in these hearings and for taking the time to come here and participate in these discussions.

*The committee recessed from 1158 to 1330.*

#### DURHAM REGIONAL LABOUR COUNCIL

**The Chair:** We have the Durham Regional Labour Council, Ms Gillian Mann. You have half an hour for your presentation. Leave as much time as you can for the members to ask you questions. Okay?

**Ms Gillian Mann:** First of all, my name is Gillian Mann, as you've announced, and I am taking the place of Mr Art Field, who was going to present for CAW Local 222. They are an affiliate of the Durham Regional Labour Council, so that's why I was lucky enough to get this brief at the last moment. I'm here to represent the views of the CAW and the 47 other affiliated trade unions that make up the Durham Regional Labour Council. On behalf of the council, I wish to thank the committee for allowing us the opportunity to present at this hearing in Oshawa.

My first reaction to the information package I received from the committee was that this was a very dry subject matter contained in the bill.

**Mr Grandmaitre:** Still is.

**Ms Mann:** But when I got beyond my first impression, I realised it was a very important piece of legislation, even though it is not exactly in the media-grabbing category.

The premise that the planning and development process

must be streamlined to meet the needs of today's rapidly changing economy is totally understandable. The bill is the result of a very thorough and intelligent royal commission headed by John Sewell, and it is therefore a well-researched and well-thought-out piece of legislation. We, the Durham Regional Labour Council, commend the committee for incorporating the majority of Sewell's 98 recommendations.

What is most commendable and acceptable to labour and the public at large is the inclusion of the revisions to the Municipal Conflict of Interest Act. Any legislation that requires stronger conflict-of-interest guidelines, more disclosure of information on assets of elected officials and the promotion of more open and accountable local government is very welcome by the people I represent.

It is no surprise that the Association of Municipalities of Ontario has stated its opposition to these requirements, although it is sad to see that this body is unable to understand the need for change. Even with the proposed revisions, we have a situation in the Durham region where our regional chairman holds no elected office, and despite the future requirements for disclosure, this local politician is shielded from any public accountability. It's been a subject matter at our labour council that we wish to promote the acceptance of this being an elected position, for future reference.

We would strongly urge that this committee not give way to pressure from the AMO to water down this aspect of the bill. The argument that these disclosure provisions would affect efficiency and discourage candidates from seeking election actually supports the public's perception that local government is an old boys' club and needs to be exposed to public scrutiny. Our labour council is active in promoting candidates to run in municipal elections, and none of the candidates that come from labour have any problem with disclosure of this sort.

The next most commendable and important provision of the bill is the inclusion of the comprehensive policy statements in section 3. There again we urge the committee not to have these provisions whittled down to meaningless rhetoric. Without these policy statements, all the quality-of-life issues that this bill will affect will not be safeguarded.

I do have trouble with the notion that speeding up the process will still allow adequate public input into planning and development, but I understand there have to be tradeoffs with respect to the interests of the developers and the rest of us. With the ability to extend time limits, we have a compromise. Please remember that it's harder for the public or interest groups to research, compile and present their case, all within very tight time limits. Most of us do not have the type of resources that the developers have to back up their proposals.

It is also a fearful proposition to see that the provincial government will divest itself of powers to empower local levels of government without knowing that there will be safeguards to the interests of the citizens of Ontario as a whole. I have in mind examples where the federal government has divested its powers. They've deregulated the airline industry, they're going to dismantle the department of Transportation, and of course they are

working slowly to dismantle, or the previous government was working slowly to dismantle, our health care system.

**1340**

Revision of the Ontario Planning and Development Act has obviously been developer/consumer-driven. Comments like "a one-window approach" to applications and "the government intends to focus on efficient delivery and excellent customer service," which were used in the briefing package sent out by the committee, have me thinking that sometimes your approach has been narrow. You are legislators, not customer service providers. You were elected to draft legislation that provides service to all Ontarians. Yes, the approval for planning and development must be streamlined, but without these comprehensive policy statements, the quality-of-life issues will not be serviced by this bill.

It is hoped by labour that the results of the streamlining of the process will produce more construction jobs. The Durham Regional Labour Council represents labourers, pipefitters, sheet metal workers and electrical workers. We represent approximately 40,000 card-carrying trade unionists, so approximately 40,000 households in the region of Durham. These workers have borne the brunt of this recession to a disproportionate degree, and any steps that promote the recovery of the building industry are very welcome.

Our council also represents public sector workers. Between the private sector workers, who are basically controlled by the CAW locals, our biggest contingents of trade unionists are public sector workers, that being OPSEU and CUPE. Our council has to speak to these workers, and they are the municipal workers who work for the region, the city of Oshawa, each town, village and township of the region of Durham. This bill should—"should" is the operative word—ensure that their jobs will be secure and that their labour will be considered a valued component in the future development in the region of Durham. Our other affiliates are from all other sectors of the region's economy. As you can imagine, with 40,000 homes, that covers just about every sector of the region's economy, and obviously an increase in development would result in benefits to all.

It is hoped the government members of this committee—and that is the government members of this committee, I repeat—keep this scenario in mind if they are seduced into any future dismantling and privatizing of public services. We do not want to see more urban jungles with no public services in place for the average citizen when there are enclaves of rich and privileged who can buy their services from the private sector. This is the urban reality in the United States today. Please don't let it be the reality in Ontario.

I had discussions with a planner on our political action committee who said that to his knowledge at this point, he doesn't feel developers kick in a fair portion of the funds for the infrastructure development. I know this bill doesn't cover all these things, but I hope there's some consideration to that in the future, that developers do have a responsibility to see that their developments are serviced properly and in an equitable manner.

The housing policy in the comprehensive policy



statements sounds good, but without publicly funded services this could become our worst nightmare. Developers could come in to make quick and easy money under the guise of providing affordable housing and efficient land use. Obviously the trade unions that I represent have no argument against the policy, but it must not be used as a mandate to create more urban ghettos of disadvantaged people. Will the money saved by developers in lowering the cost of approval of development be passed on to the consumers? If so, we hope that we can look forward to the lowering of the average house price for the Canadian dream home, which is detached and with a garden. Why is it always assumed that blue-collar workers prefer to live in high-density "affordable" housing? Another inaccurate assumption, I feel, is that high-density land use will somehow save farm land from going under concrete. I've never understood that.

My last comments with regard to this bill are that these very important, if not exactly perfect, comprehensive guidelines may only prove to be a safeguard to the interests of Ontarians if the government of the day does not change its political complexion with the intent to dismantle the policies one by one under pressure from the business community. Also, if the fee structure and present bureaucracy of the OMB are not brought into line with the accessibility provisions of the bill, the intent of the bill will be watered down considerably.

Lastly, the empowerment of local government must go hand in hand with the provisions for openness, disclosure and strict conflict-of-interest guidelines. It is a sad commentary on the present system that this infusion of integrity into local government is necessary before it can be vested with more power. The public is dependent on their local politicians to interpret the plans of any proposed development, and it is a sobering thought that the public has no way of knowing whether or not their local politicians are dealing with them honestly.

These hearings deal with an issue that is often of little concern to most people until a developer wishes to construct a 20-storey apartment building in their backyard. In some cases, people receive notices in the mail that talk of variances, of official plans, secondary plans, density etc, and in most cases, they're at a loss to understand it all. They have to depend on the local politician to interpret and explain. For this reason, the changes dealing with open government are very important. If we cannot have a system that ensures that both debate and disclosure of financial interest are conducted publicly, then access will be restricted to developers, planners and other professionals who act on behalf of powerful interests. Therefore, the provisions for openness in the bill are important to ensure community input into planning.

The argument that the setting up of local disclosure-of-interest commissions will contravene the Canadian Charter of Rights and Freedoms cannot be supported when those local politicians who are elected accept that they could be, in some cases unknowingly, breaking the existing law. Certainly they will find these disclosure provisions etc a reassuring feature to their terms of office. No more will local politicians have the burden of having

to look over their shoulders to see if some vigilant taxpayer has set the Ontario Provincial Police municipal fraud department on them. It is also a logical provision within the bill to have the interests of the collective policed by the public, and not to expect the individual to protect the public's interest at his or her own expense.

The redirection of powers from the provincial government to the local levels of government must be tied directly to the accountability of the elected officials at the local level or we will go back to the 19th century when towns like Oshawa were annexed from their historical county roots to become renegade places designed and run by big business interests. Oshawa is still haunted by its past, as evidenced by its dead and dying downtown core.

In summation, the notion that this bill will actually prove to be user-friendly to all is possibly a bit naïve. However, if the bill is as fairminded when it becomes law as it appears to be in its first draft, the people of the province will have a good piece of legislation in place. Thank you.

**Mr Grandmaître:** On page 2 of your brief, the fourth line: "It is also a fearful proposition to see that the provincial government will divest itself of powers to empower local levels of government without knowing that there will be safeguards to the interests of the residents of Ontario...." and I could go on. Why are you so reluctant to give municipal government that power of decision-making?

**Ms Mann:** I think in my last paragraph, if you look at Oshawa, it is a town that suffered from rape and pillage by basically General Motors interests in the past. It has no vibrant downtown core any more. The development that took place around Oshawa was geared to having high-density affordable housing for workers to service the GM plants in the north and south end. Oshawa was butchered from that point on, as a holistic plan. So from where I stand, and taking direction from people who are more versed in planning, we could go back to a 19th-century model where if there isn't this disclosure and openness, local authorities could end up just creating towns and municipalities that suit business interests, or limited interests; let's put it that way.

1350

**Mr Grandmaître:** But this morning at 9:15 our very first presentation before this committee was a Mr Andrew Lauer, who told us that things were just rosy in Oshawa; in fact, they've issued \$140 million in building permits, and things were just rosy.

**Ms Mann:** It depends what you're basing your roses on, what criteria.

**Mr Grandmaître:** Assessment, more assessment.

**Ms Mann:** Building permits are fine, but as a community with a vibrant centre it has disappeared. As a community that knows itself and feels that it's a place, that has definitely disappeared. We have no core. The Oshawa Centre is the core of this city now. The core that used to be, which was the joining of Simcoe and Bond and King, the four corners, if you take a look down there, it looks derelict. We have so many businesses closing. We have small businesses that open up for a short time,

but they don't have a sustainable clientele that keeps coming back to them.

We do, fortunately, still have our civic centre in the core, but as for vibrant businesses, really there aren't any. We do have the Ministry of Finance, but there again, they are people who just spend their lunch-hours in the core of the city and then disappear away to actually other jurisdictions. They don't even live in Oshawa. We've lost our identity as an identifiable town, unlike Whitby, for instance, which is only a few kilometres up the road, which has an identity in the core of it.

**Mr Eddy:** Thank you for your presentation. I'm going to review it in detail. I must say, though, that Oshawa is not alone in what's happened to its downtown. I come from an area, the city of Brantford, which is very much the same. What do you think is the answer to restoring the urban centre, the core? Because of what's happened in Brantford, and maybe it's here too, the large shopping centres on the outskirts and the rezonings to permit the large estate homes to become the commercial offices of the area, the downtown is abandoned. It seems to me that to bring the core back you have to treat it like a shopping centre. It's got to have the free parking, acres of free parking, and do it somewhat similarly. Do you have any comments?

**Ms Mann:** As you've obviously detected, I did originate from Britain, and I go there regularly. In Europe, that is a way of revitalizing the downtown core. They make the inner-city pedestrian, and they bring boutique-type development in.

It goes back to planning, doesn't it, planning and development? It goes back to people who live in the community, who care about the planning and development. It goes back to the people you elect who are making those final decisions, that they do intend to spend the majority of their life there and bring up their kids there and have their grandchildren there and that there's a broad range of interests that go into planning. We don't all want to shop till we drop in mile-long malls. We don't all want the West Edmonton Mall in our backyard. Some of us would like something a little different. It's hard to tell developers that sometimes when you're not represented, when you're not at the table or when your representative has a vested interest in not telling the developer what you would like him to tell him.

**Mr Eddy:** So you're very strong on disclosure; I see that.

**Ms Mann:** Yes, I think you'll get better community involvement. You'll get better candidates. You might even get more candidates, because you might get, you know, the middle-aged housewife who's decided that she doesn't want a career any more and she'll take more interest in municipal politics.

The way I've observed local politics to go over the years that I've been in Oshawa is that there are a select few who turn up every municipal election and the incumbents just get their seats, just by acclamation. We've got to educate the public and educate people to realize that it is their town and they have an input into what development goes on in that town.

**Mr Villeneuve:** Ms Mann, thank you for your presentation. Rape and pillage by GM: I come from an area in eastern Ontario—Cornwall is not in my riding—but they would appreciate a little bit of the rape and pillage that GM has brought to Oshawa. What do you mean by "rape and pillage"?

**Ms Mann:** If you remember your labour history, the riches that came to Oshawa came out of a lot of pain and suffering. It came out of basically the activities of Local 222, the CAW. Business is not the business of morals; business is the business of profit and loss. I have no problems with business people wanting to make money. When business people try to tell me that they're there for the good of mankind, then I become a bit sceptical.

**Mr Grandmaitre:** It's better than starving.

**Ms Mann:** A lot of money has come from General Motors to Oshawa, basically because the labour union has wrestled that money from it, but also it's gone away from Oshawa as well. They have, as you know, put their plants in jeopardy here many, many times. We have an assurance now, I think maybe three or four years staying at status quo. This town goes into apoplexy when there are any signals from GM that it may leave.

**Mr Villeneuve:** That's understandable, though.

**Ms Mann:** If you saw the movie *Roger and Me*, that could be Oshawa's story. But we are connected to the outside because we are becoming a dormitory suburb to Toronto. But when this town was developed, they put in cheap row houses along most of the arterial roads in the south end to service labourers who worked at the plant, and basically the roads don't match up. They're all potholey. We have this thing called the Albert Street Bridge, which is an eyesore. The railway tracks cross Oshawa and truncate the roads. You can see who called the shots in developing the interior core of Oshawa. They didn't do a good job of it.

**Mr Villeneuve:** Did I hear in your presentation correctly that you anticipate that the Sewell report would reduce land prices?

**Ms Mann:** Well, no. I was hopefully under the impression, being naïvely optimistic, that maybe if the process becomes more streamlined and developers don't have to put out such—and I do understand—inordinate amounts of time getting through the planning, through different levels of government, maybe there would be a savings at the bottom end of it. I very much doubt it. We hope that streamlining ends up with benefits for everybody, and it would be nice, at the end of the full scale of benefits, if perhaps the lowering of prices would be there without having high density. I'm just hoping. Obviously, there again developers are in the business of making money.

**Mr Drummond White:** Thank you, Ms Mann, for your very full presentation. I was impressed with the issue of accountability that you bring up, and I think the issue that you were just discussing about the downtown area has to do with accountability, accountability to the comprehensive policy guidelines, to adherence to one's official plan. That's certainly been a major issue of controversy locally in our city, when we look at how



businesses and regional government have moved out of downtown Oshawa despite the official plan.

The accountability issue I want to pick up on, though, was, first of all, you mentioned the issue about the regional chairman not being elected and the issue about whether or not the conflict of interest, the disclosure of assets, would dissuade people from running for public office. I know Mr Grandmaître and Mr Eddy came from a municipal background, and they aspired to a provincial background, where they had to disclose their interests. It didn't seem to dissuade those very worthy gentlemen. Myself, I don't have any interests to disclose. I wonder if you could elaborate upon that. Do you have a sense of the interests of local politicians?

**Ms Mann:** I think it would be a relief to someone running in local politics at this juncture, where there have been so many provincial police investigations into municipal corruption. From where I'm sitting, I can't see that it would be anything but a relief for a local politician to have this mechanism at hand to say to the public, "This is it." They don't have to disclose the amounts, they just have to disclose their interests and their family's interests. It doesn't mean to say they're villains when they disclose it. It's just that it's a burden off their back. They don't have to know that someone is going to go on a witchhunt, and it clears the air.

I think you'd get a better calibre of person, because anybody who is interested in keeping secret their interests and going into local politics has obviously got a hidden agenda. To me, I think you'll get a better quality of person. You'll get a more community-minded, community-spirited person with more moral fibre. This area of whether they are pork-barrelling at the local ratepayers' expense won't be an issue for them any more; it will be disclosed. Every level of government has gone this route. I can't understand any right-minded person having any problem with it.

**Mr Gary Wilson (Kingston and The Islands):** Thanks very much for your presentation. I certainly found it and the discussion that we've been having very enlightening. In particular, I like your emphasis on the public participation that this bill allows for. I would like, if we had more time, to hear your views about how you generate that kind of participation, given your experience with the labour council, because of course it's a similar body that requires volunteer participation.

I just wanted to highlight your commending the bill, or at least looking forward to the increased job production that is related to the streamlining, not only in the private sector among the trades workers but among public sector workers. It concerns me a bit that we might lose something here in your reminder to the government members of this committee, as you put it, about the importance of public sector jobs. I was wondering, while you're singling out government members, do you think that the opposition members are impervious to that kind of seduction, or is there something we can learn from them about the protection of public services?

**Ms Mann:** As a victim of the social contract myself, I direct those comments particularly to the government members because they have been seduced into thinking

that the policy of "beggar thy neighbour" is going to somehow balance the budget and decrease the deficit.

I represent these people. These are, in the main, CUPE workers who are municipal workers. They do a fine job of clearing the roads, sanding the roads in the wintertime, fixing potholes and drainage problems. You can't sustain good development and have a vibrant development business without knowing that once all the development is in place it's going to be serviced properly.

When you do contract out—I've seen it in Britain—you get patchy, piecemeal servicing. You get enclaves of areas where people pay for services because they have the money, and then you get areas where the people are working class and can't pay for the services and don't get them.

It's incumbent upon the government members of this committee to keep in mind that the municipal sector is very important to successful planning and development. We will have wastelands.

**Mr Gary Wilson:** Well, I'm pleased to see the opposition members listening very intently to that as well, and I'm sure that they support that thoroughly.

**The Chair:** We've run out of time. Mr Hayes wants to clarify a point.

**Mr Hayes:** Mr Grandmaître made a comment earlier, and I know that he would want the record cleared up also. He had mentioned that it was Mr Andrew Lauer who talked positively about development and things of that nature. In fact, it was not Mr Lauer; it was Tom Edwards, the mayor of the town of Whitby, who made those comments when he was welcoming the committee into the area.

**Mr Drummond White:** With respect, Mr Hayes, the development he referred to was in the town of Whitby, not in the city of Oshawa.

**The Chair:** We thank you for taking the time to come before this committee. Thank you for your participation.

For the record, I'm just going to check to see if the Ad Hoc Committee of the Ontario Wildlife Working Group is here. Obviously not. The Ontario Federation of Agriculture? They're not here either. Okay, this committee will recess for 20 minutes.

*The committee recessed from 1405 to 1432.*

AD HOC COMMITTEE OF THE ONTARIO  
WILDLIFE WORKING GROUP

**The Chair:** I would invite the Ad Hoc Committee of the Ontario Wildlife Working Group to make its presentation. Welcome, Ms White.

**Ms Liz White:** Hello. My name is Liz White. I'm with an organization called Animal Alliance of Canada. We're a Canada-wide organization and we participate in a number of issues with regard to the protection of animals, wildlife issues, environmental issues etc, and a number of years ago participated in a committee that was formally set up by the Ministry of Natural Resources called the Ontario Wildlife Working Group. The reason why I'm here today is simply to submit the final document from that report. You have it in front of you. It's A Proposed Action Plan For "Looking Ahead: A Wild Life Strategy for Ontario."

This is a document that is a culmination of five years of consultation with a number of organizations in Ontario of differing and disparate opinions vis-à-vis wildlife. There are a number of recommendations within this document that I think overlap with Bill 163. I'm simply here today to table this particular piece of information and ask that the committee take a look at this in conjunction with any changes that will go through with regard to Bill 163 and attempt to incorporate some of these particular situations.

If you take a look at the book, the areas that would be of most applicability to Bill 163 are: the whole area around the ecosystem approach; an area with regard to the protection of biodiversity, and it deals with land use planning, protection of waterways, protection of wetlands, all sorts of things which are also incorporated into Bill 163; and the section that deals with the rehabilitation of degraded ecosystems. Those are probably the three sections which would have the most impact on the amendments that you're looking at to the Planning Act and other acts. I'm simply here today to table that and to ask you to take that into consideration when you're thinking about making any changes to Bill 163.

I have to say that for somebody who's interested in wildlife and the protection of habitat for wildlife, Bill 163 actually goes some distance in doing that, and I feel greatly encouraged by what is actually incorporated in the statement of principles and other components within Bill 163.

The one final thing I would like to say, not wanting to take the committee's time in any great detail, is that this is an incredibly comprehensive document. It has drawn upon resources from a large number of very well educated people across Ontario, but being complicated, it is difficult to integrate on a clause-by-clause basis into the piece of legislation that you're looking at today. So I would suggest that if there is any interest on the part of the committee in terms of incorporating some of this material, we would be quite happy, as representatives of the ad hoc committee, to participate in any side discussions that might need to take place in order to determine how to incorporate certain components of this particular document and what might need to be prioritized in terms of what could be incorporated. So I just offer that as a suggestion and I'll leave it at that. It's really quite a simple presentation.

**Mr McLean:** I want to thank you for appearing before the committee and presenting us with this document. I'm going to find it very interesting. There are a lot of things here that touch on a lot of the things that I do, as a sportsman, as a farmer and as a politician, dealing with private lands and a whole array of things. I don't really have any questions for you. I will have some probably in a week.

**Ms White:** My number is here. You're welcome to call. If anybody needs any further of those documents, they are available through Peter Evans at the Ministry of Natural Resources who is now heading the Ad Hoc Committee of the Ontario Wildlife Working Group. So if you want to pass that around for comment to your constituents—I would suggest that the more comment we

have on that document, when it comes to the government taking a position on that document as well, the better able we'll be to deal with it.

**Mr McLean:** I haven't had a chance to look through it, but you said there were many people involved in putting it together. Are they named in here somewhere?

**Ms White:** Yes, they are, at the back and at the front. It includes, for example, what I would say are probably two entirely divergent opinions, like the Ontario Federation of Anglers and Hunters and organizations like ours would have, or the fur bearers or the trappers. All of us sat on the committee. In fact on the ad hoc committee there's a trapper and myself and a number of other people who are working through this.

**Mr McLean:** Did the Ontario Federation of Agriculture have any input?

**Ms White:** Yes.

**Mr McLean:** Good.

1440

**Mr Villeneuve:** Thank you very much, Liz, for your presentation. Bill 162 you address quite extensively in this presentation. This is of great concern to many farmers.

**Ms White:** Yes, I understand that.

**Mr Villeneuve:** The ownership of—I see you've touched on it here, to amend the Game and Fish Act—animals that are considered wildlife, domesticating the production of deer or deer farming: Do you think it fair that you would actually describe in legislation, Bill 162, what a farmer is?

**Mr Grandmaitre:** Bill 163.

**Ms White:** Just for people's clarification, Bill 162 is an amendment to the Game and Fish Act which is touched upon in the ad hoc committee and does deal with land use planning but not totally.

Is it fair? I don't know. It was a culmination of probably 160 people's opinions that came down to a consensus being that—and to which the Ontario Federation of Agriculture was indeed opposed. What we have tried to do in the interim is to have a meeting with the deer farmers and a number of other organizations to see if we can come to some kind of compromise on that basis to protect our own wildlife from injury and disease that might be in non-native deer species, and how to protect our own native wildlife from those without damaging that particular industry.

**Mr Villeneuve:** And you're aware that the province of Quebec, the province of Saskatchewan—two for sure that I've looked into—have gone in the completely opposite direction as it encompasses deer farming?

**Ms White:** There are a variety of different approaches across Canada. Some have put a complete moratorium on the importation of all of what would be exotic animals into Canada for the purposes of intensive farming. Some have encouraged it. In fact, Agriculture Canada, as I understand it, has not yet taken opinion on it, although there are very divergent opinions even within Agriculture Canada as to how this affects populations.

It's not an easy issue that one can grasp and I think a



very contentious issue. What we've tried to do is to take the contention out of the issue and move it into a situation where people of different opinions can sit down and talk about how to deal with compromise. What I don't want to see is an increase in the number of farming of exotic animals. I don't want to see alligator farms. I don't want to see snake farms for skins. I don't want to see any of that. That is a coming trend in some other states in the United States. I think we should put a limit on that.

Whether we should affect the deer farmers specifically, I don't think so. From my point of view, I wish they wouldn't do it. But given that we have the industry there, we need to have some degree of control over it, I think, at a minimum.

**Mr Wiseman:** I will read this with some great interest as I have a private member's bill before the Legislature, Bill 174, which deals with threatened, endangered and vulnerable species. I will be very interested in reading it.

*Interjection.*

**Mr Wiseman:** Mostly Tories.

*Interjection.*

**Mr Wiseman:** I used to teach and I can hear very well. I heard what he said.

What we're dealing with here, as we deal with any legislation, are checks and balances and how you can accommodate a variety of opposing interests. What we're hearing from the development industry, the developers, is that they want to be able to speed through the process. What we're hearing from individuals and from other groups that represent environmentalists or preservation-of-agricultural-land people is that they want to have a part in the process, that they want to be able to be included in creating the checks and balances.

But underlying this is this whole question of property rights and people being able to do whatever they want with their property, as opposed to what I would consider the opposite end, which is that we live in an ecosystem and therefore we don't really have property rights to the extent that you may have thought you should have, because what you do there is going to affect me. Therefore, we need to work this out. I think that's a very complicated problem that we're dealing with here. We're dealing with it in this bill. I think that one of the things that we have to look at is how do we do that and how do we make sure that people can still be enfranchised even though they've given their vote to somebody at a council level.

In your investigations and in your discussions with people about your book, how was that debate resolved about property rights and individual usages of land as opposed to community uses of land?

**Ms White:** As you understand by this book, there is nothing in legislation at the moment, so this was a matter of discussion. If you look through this book, there are a number of committee structures that are proposed in a number of different, what I would call contentious, areas: development areas where they are adjacent to lands that may house vulnerable, threatened or endangered species; or class 2, class 1 wetlands; a Carolinian forest, a small area of Carolinian forest, or whatever the protected area

might be; or where you have agricultural situations where a number of activities on the agricultural lands have caused environmental degradation for whatever reason. What those structures were intended to do was to provide a forum for people of opposing points of view within the community to come together and try and work something out.

I think the one thing that became quite clear of this meeting that we had of the 120 or so people—we were totally and completely in opposite camps—was that although one might like to force their opinion down somebody else's throat—I would like to do that sometimes; other people on the other side would like to do that to me sometimes—is that in fact the bottom line is, it doesn't work, and that if you can provide a forum for discussion about issues that people can come together and begin to understand where the other person is coming from, in many situations you can come to a compromise that maybe not everybody is pleased with but I think will end up being better for the environment than in the long run would be the contentious issue.

The only thing I would say is that in terms of Bill 163 or the Planning Act when it's ultimately amended, where there are violations, if there is not an enforcement component to actually make sure that certain things are done, there's a tendency for that sort of stuff to erode. My sense, being on the wildlife side of issues, is that wildlife is the very bottom of the ladder in that it will be the last to be dealt with, and if there's any contention between a development and a protection of a particular species, for the most part the species will not be protected.

That's why I'm here today, to say there are processes in this book that will perhaps allow developers, environmentalists, animal people, municipal councils, boards, whoever is making the decision about the development at the time, to come together and resolve those issues, and I think the structure, having been through a number of these over a period of five years, has quite remarkable potential.

**Mr Wiseman:** Thank you.

**Ms White:** Did I answer your question?

**The Chair:** If it were a brief question perhaps and a brief answer, that would work.

**Mr Wiseman:** No, you know me; I can't be brief, not on this topic.

1450

**Mr Curling:** Thank you very much and I know you will want us to comprehend this in a few minutes or so.

**Ms White:** No, I don't. You can take some time to read it.

**Mr Curling:** Just by a quick look at this, it's quite involved. I just want to caution, and who am I to caution Mr Wiseman on this, but the fact is that we've got to bring both people in play, the developers who are looking at developing areas for human beings, and I noticed that your guiding concept is that humans are an integral part of the ecosystem, and human beings live somewhere, so while we may do this by depleting some of the areas, we must also take into consideration that there are areas

where people have to live, and sometimes we have to have that kind of balance.

What I'm saying really is that this is quite involved and very well done, and on the other side of it all, if we could get more people coming together to work it out in a good way of saving our ecosystem and also human beings to live, then we'd have good planning, and this is not being done.

Do I get the feeling too from you that the hearing is a bit rushed, that we shouldn't really rush this hearing, this process, but to make sure that all are heard properly who are part of this plan and that we hear their view well enough so we can have a good plan and act?

**Ms White:** I'm not so sure that you need to hold up the process. I think what is possible to happen in this whole thing, with staff or whomever, is to have a parallel activity that goes on. There are already principles within the Planning Act, as I see the amendments around the environment, that do incorporate kind of the sense of this document, but there are specific activities that I think would help clean up the process a little bit and allow for community participation in a much easier way perhaps; I'm not sure. I'm not sophisticated enough in terms of the Planning Act to be able to say yes, you could do all of this in the Planning Act, so what I'm asking is that while the committee is hearing submissions and talking, a parallel process be going on with staff with regard to this document to see if some of the actions can be incorporated relatively easily within the Planning Act amendments.

**Mr Curling:** Why would you feel it is something being held up? I think what I am suggesting is that this was done and it took a lot of time to put this all together and well researched and all that. On the other side of it too, the side I don't think has been heard properly, the planners and the developers in the housing area and all that, because we are hearing policies are coming out—intensification; we're hearing all this—but we haven't seen a sort of collective presentation as effective as this, I would say. I'm saying both things have to come together in order to have an effective plan. So I don't see it as held up in any way.

**Ms White:** I would have to say that when we went through the five years of this document, many people who were involved in planning issues in various ministries within the province of Ontario participated in this document, knowing there were planning objectives affecting how a community might develop.

The truth is, in this document, if you're concerned about the environment, you will have to address urban sprawl. You have to address it. You can no longer allow four units per acre density. You can't allow communities where everybody in the house has to get into a car to go and get milk. You can't allow communities that just sprawl out into all kinds of wetlands and woodlots, because in southern Ontario woodlots and wetlands are precious few, and whether the woodland is a small woodland or not, it may be a very important component to the kind of wildlife that is indigenous to that area.

I'm not sure that we need to hold up this process. There have been lots of planning people involved in this

document. So I think what we need to do is to take this information, if at all possible, and incorporate it. But I wouldn't suggest that we have to hold up the committee to do it. What I think is that it's possible to do a parallel kind of activity while the committee is meeting and talking about this stuff.

This is open for circulation. It's been out since December 1993, and I would suggest that we move the process along as much as possible.

**Mr Eddy:** Could I ask, was it the Ministry of Natural Resources that got this going, or who?

**Ms White:** It was the Ministry of Natural Resources, yes.

**Mr Eddy:** The Ministry of Natural Resources commissioned and got the committee together, the people?

**Ms White:** They appointed a committee in 1989 called the Ontario Wildlife Working Group, which brought together 10 of sort of the top environmental wildlife sorts of people, who then brought together a whole raft of other people, including planning people, agricultural people, trappers, all the people who might possibly be involved with planning and developing an ecosystem approach to wildlife and to the environment.

**Mr Eddy:** I really regret that I haven't had a copy, as a member of the Legislature, before this. I know I'm a backbencher in opposition, but, damn it, I should have the information that's prepared by ministries, I think, and know what the hell is going on on occasion. I will study the brief completely.

**Mr Hayes:** Quit your damn swearing.

**Mr Eddy:** It's not right. I'm an opposition backbencher, but that doesn't mean I should be kept from knowing what's going on.

**The Chair:** Mr Eddy, I'm not sure any one of us has had access to those documents.

**Ms White:** Can I just say one thing for clarification?

**The Chair:** Yes.

**Ms White:** There has been no formal position taken by the minister as yet. This became available in about February, I think. It was printed in December, but I don't think I actually got a copy of it until February. It has not been circulated virtually to anybody, but there are 200 or 300 copies within the Ministry of Natural Resources, and I've just been going to committees, as I was directed by Mr Hampton to do, to submit this document and say if there are—

**Mr Eddy:** My point is, I'm a member of the Legislature. If Mr Hampton has it and the government has helped pay for it, then I'm entitled to have it. I'm not blaming you in any way. I'm just saying Mr Hampton—he's not the government, for God's sake. We're all members of the Legislature.

**The Chair:** All right.

**Ms White:** I don't have control over the document.

**The Chair:** We realize that.

**Mr Eddy:** I would have been able—

**The Chair:** Mr Eddy, please.

**Mr Eddy:** —to respond intelligently to you today if



I'd had the opportunity. Maybe not intelligently—

**The Chair:** Mr Eddy, we heard your point.

**Ms White:** I would be happy to answer anybody's questions if anybody has any questions. My telephone number is on this piece of paper.

**The Chair:** Well, Mr Eddy, that's fine.

**Mr Eddy:** You see, that's the point. I can't—

*Interjections.*

**The Chair:** Ms White, we thank you for coming today and participating in these hearings.

**Mr Eddy:** As an elected member of a local council, you know everything that's going on, whether you're for it or against it, and in the Legislature I'm a dummy in the back row.

**The Chair:** Mr Eddy, it would be wonderful if all of us could have access to the information when we want it.

#### ONTARIO FEDERATION OF AGRICULTURE

**The Chair:** The Ontario Federation of Agriculture, please. Welcome to this committee.

**Mr Roger George:** Thank you, Mr Chairman. My name is Roger George. I'm the president of the Ontario Federation of Agriculture. With me in the delegation I have Bill Weaver, our first vice-president and chairman of our environment committee; David Armitage, from our research department; and Alvin Runnals, a member of the OFA executive committee and also the chairman of our land use committee.

**Mr Villeneuve:** From Dundas county.

**Mr George:** From Dundas county, that's true. Thank you.

We are pleased to be here today. I believe our brief has been circulated. I'm not going to read it per se, but as the representatives of 38,000 individual farm families and with organizations at the local level in 47 areas across this province, we believe the farmers of Ontario who manage and have custody of 14 million acres have a vested interest in Bill 163.

Our submission essentially touches on four areas of concern, the first one being the omnibus nature of the bill, the second one the difficulty we have with the words "be consistent" with the provincial policy statements, thirdly, the issue of property rights and, fourthly, the area of rural development.

The omnibus nature of the bill really bothers us. We find it somewhat complex. We feel that this has made our approach to looking at this bill a lot more difficult for us to understand and we feel that separate statutes would have been far more appropriate and that the many amendments in the single bill has resulted in substantial sacrifice in detail. This lost detail will presumably be covered in regulations and policy statements and implementation guidelines, none of which are before this committee. So we think the process is wrong, because we have grave concerns with many of the provincial policy statements. Where do we go and take those concerns?

I think the fundamental problem we have with this bill, and we hear it time and time again from virtually all of our county federations, are the words in there "be consistent with" as opposed to "have regard to" in the old

section. The OFA views this proposed change as a prime example of excessive provincial regulation. To insist that municipal decisions be consistent with provincial policy statements severely hampers the ability of the local decision-makers in controlling their own destinies.

Indeed, this is why the OFA actively encourages its members to participate in local municipal politics. We're actually into that process right now. We just wonder how many of our members are going to actually get into that democratic process, given the fact that they're going to feel that their hands are tied anyway in so much as any decisions they make have to be consistent with policy statements that are already basically there and that there's no discretion for using them as guidelines. We believe, and we've argued many times, that good land use planning should be achieved locally, so we have some major, major problems with this section.

The policy statements we've always believed should act to guide decisions, not to ensure a particular outcome, and we cannot possibly support this amendment calling for these planning decisions to "be consistent with" provincial statements. As I've said, it's our view that this amendment will reduce local planning initiatives to nothing more than a paint-by-numbers exercise. The first page of the Sewell commission's final report states that in their consultative process, they found general support for "better, more local planning." Clearly, this is the public voice the commission was so anxious to hear, and it has not been listened to.

#### 1500

The third area of concern for the OFA is the issue of property rights. I think it's fair to say that as we have travelled around the province this summer, the one issue that's consuming farmers right now is their property rights. They are sick and tired of interference by many arms of government around the land that they own, that they pay the mortgages on and that they pay the taxes on. That erosion of their property rights is leading the OFA into some major rethinking on its policy statements as well. We have some issues before our board of directors, and we feel that Bill 163 provides further reason for concern in proposing in section 20 the following amendment to section 34 of the Planning Act, which would say:

"3.1 For prohibiting all or any use of land and the erecting, locating or using of all or any class or classes of buildings or structures on land that is contaminated, that is a sensitive groundwater recharge area or headwater area or on land that contains a sensitive aquifer.

"3.2 For prohibiting the erecting, locating or using of all or any class or classes of buildings or structures within any of defined area or areas...." It goes on and on and on.

We strongly objected to the provincial policy statement dealing with agricultural land on the basis that it prohibited development within "prime agricultural areas," and Bill 163 will now ensure that virtually all rural land that is not protected as a prime agricultural area is protected either as a sensitive area or a natural feature. There's no doubt in the minds of many of our members of this organization that they will have their land basically frozen without compensation, and I've been using

the expression "expropriation without compensation."

It's certainly not our vision to see our rural land inappropriately developed, but we do maintain that the remedy to inappropriate development is good planning, not prohibition of and any all development in builtup areas.

Our final comments deal with rural development. The OFA firmly believes that agriculture can co-exist in harmony with a multitude of land uses. We don't see rural Ontario as 100% agrarian any more. However, to prohibit growth and development in parts of the rural province through the Planning Act is to deny rural residents the opportunity to manage their own communities. It's our experience that some rural communities themselves may impose strict land use policies that discourage uses other than agriculture, and that's fine. Other areas of the province, though, may wish to diversify their local economy and that opportunity must be left available. Flexibility and common sense remain the key areas.

Finally, we would just like to re-emphasize a point we've often made. There will always be land use conflicts with respect to agricultural practices that have occurred in the past and will probably occur in the future. What is needed are workable conflict resolution mechanisms, preferably in the form of stronger right-to-farm legislation. We already have some, but we feel it is not strong enough yet, and to attempt to deal with these conflicts or potential conflicts by prohibiting all but agricultural uses is not only unimaginative, but it will ultimately destroy the communities it sets out to protect.

**Mr Wiseman:** I'd like to start with the section where it says "have regard to" and one of the problems that is being experienced. I'm not sure that the Ontario Federation of Agriculture experiences it quite the same way that we would experience it in these urban areas. I'm not sure that this bill or the amendments to this bill are going to have the kind of substantive impact on the rural community that you're outlining, but to have regard to in terms of a policy is very weak. It doesn't do anything at all.

In my experience, what it means is that it's equivalent to this: You would like me to have regard for your document. I've had regard for it. That's what it means in the Planning Act, that local councils, regional councils, can have official plans, and in this wording of it they say that you will have regard to provincial policies, you'll have regard to the protection of wetlands, you will have regard for the preservation of agricultural land.

None of it happens. None of that happens. They continue to fill in wetlands. They continue to take out productive woodlots. They continue to get reports on the need to preserve Carolinian forests, and then they rezone them and have them wiped out.

So I guess my question is, given that in the urban areas in particular "have regard to" is not a strong enough statement, how do you balance that against what you see as the need for the rural area? This is really quite the conundrum that I think Mr Eddy will probably be going after as well, but I don't think to "have regard to" is anywhere even close to being strong enough. I said to a

developer in London when we were there, I personally think "will conform to" is a better phrase than the policy statement. My own thinking on "shall be consistent with" is that it is weaker than it needs to be in terms of what's happening in the urban areas.

**Mr George:** At the same time that you think "have regard to" is too weak, we believe "be consistent with" is too strong. We're not interested in solving your urban problems on the backs of rural people, and that's essentially what you're saying when you get us to buy into this one. If you've got an urban problem, don't try and make the rural people pay for solving that problem.

Because I tell you, you made some allegations about draining wetlands and whatever. I can stack Ontario agriculture's environmental responsibility up against anywhere in this country, or in the world, for that matter. We have got our environmental farm coalition and our environmental farm plans in place. For a minimal \$9 million of public money, we have got a world-beater there, and I contend, sir, that Ontario agriculture is leading the pack when it comes to environmental and land use issues.

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**Mr Wiseman:** I didn't contend anything to the contrary, but what I am asking is, how do you reconcile what you just said with what I just said in terms of "be consistent with"? This is a really important issue within the context of what's happening in my community and the way things are developing in terms of having an official plan, for example, that's less a year old and already a multitude of amendments are coming forward that are changing the very nature of the official plan, changing commercial-industrial zonings to residential zonings. This is in a plan that's not even a year old.

What we're looking for here is, how do we solve this problem? In the context of the rural community, we've been told that hamlet development, infilling in hamlets and the growth of other industrial parts to the hamlets are all possible.

**Mr Bill Weaver:** I think we referred to part of the answer to your question in the document. I would expect that a number of your colleagues have served on municipal councils, rural or urban, and I think the way to ensure that you get good representation at the municipal council level is to ensure that they have the ability to make meaningful decisions. If my municipal council is going to be told that it has to concur with the legislation that has been meant to solve Toronto and Hamilton and Ottawa's urban problems, and I say, "Well, I can't make any other decision," I'll tell you, I don't want to run for that municipal council, and I don't know anybody else who would.

We are very strong on the responsibility, first, of municipal councils to be able to make the proper decision that's going to lead their municipality, lead the particular people they're representing. If you take that away, what have we got left? If there's a problem with the municipal structure, if there's a problem with too many and too small municipalities, which some would put forth, deal with that one, but don't solve the agricultural problem by urban solutions.



**Mr Winninger:** Do you acknowledge that there are some provincial objectives and priorities that might transcend regional priorities, either urban or rural; that there may be provincial interests that transcend local or regional interests having to do with planning objectives?

**Mr George:** I will concede that clearly we need some long-term provincial policies, but don't constrain the local people. There has to be that flexibility there. It's one thing to have some overall planning, and we can all agree here that, yes, we need to save agricultural land, by and large. However, there will always be exceptions to that rule, and I just don't want to be put in a straitjacket where my local people haven't got the ability to make some decisions which are right for that local area, regardless of what the provincial overall policy may be.

**Mr Winninger:** That's what concerned me, because if you had regard to a provincial policy statement and then you elected to disregard it and proceeded with an incompatible course, aren't you then putting provincial interests at risk?

**Mr George:** No. There may be very good reasons to go against those policy statements, and I think we can take the old Food Land Guidelines of 1976 as a good example which are still in use. They're still the guidelines, and yet some of those decisions that are now based on those guidelines are just totally out of touch.

**Mr Winninger:** Some would argue they don't go far enough.

**Mr Grandmaitre:** That's what you did in Middlesex.

**Mr Eddy:** That's a particular problem. We should return to that and discuss that fully one day, and hopefully we will.

Thank you very much. As usual, you were very clear in your presentation; concise, direct and very forthright. We appreciate that and that's what we need. You've put your finger on the whole thing: the difference between rural Ontario and urban Ontario. Urban Ontario for the most part has destroyed the fine woodlots, the bushes, the ecosystems, the wetlands, the streams. We've seen it all. Now it's up to rural Ontario to save it.

Now, there is a difference, a tremendous difference, and we've got to look at that. We cannot do it on the backs of the rural municipalities.

You mentioned the wetlands, and I well know what's happened in the town of Haldimand where everything is to be saved because of the fear of what's happened in the urbans, the large areas. So there is big difference and we have to look at the difference, and we have to deal with them differently, I think.

You mentioned about rural councils and you're right.

Omnibus bill: I agree with you, there are too many things in here. The sorry result is that when people come forward, they have to choose what they're going to discuss; they can't discuss it all. There isn't time, and there isn't time for us to respond to those and ask questions.

The policy statements: Given that the bill is going forward as it is and the clause "have regard to"—by the way, you should feel very good about this because the government says the wording "be consistent with" gives

flexibility. So I want you to remember that. It's stated in Hansard: It gives flexibility. We've got to see that.

But given that this wording is going in, the policy statements are here before us and they're part of the act and you're going to have to follow them, did you have a lot of input to the preparation of the agricultural land policies brought forward now as part of this bill through the OMAF route? Did you have a lot of input? Because you are the rural people and should have had a say. I'd like to know to what extent you assisted the ministry in bringing in the agricultural land policies that rural Ontario's going to have to live with.

**Mr Alvin Runnalls:** We feel that we haven't been consulted. It's lack of consultation and lack of compensation.

**Mr Eddy:** That's a terrible shame. It's wrong. No wonder you're saying, "When and how do we review the policy statements?" That's this one in particular, and there are some others that certainly affect you.

I want to also take the opportunity to commend and thank the association for what the farmers in Ontario are doing in so many ways: minimum tillage, zero tillage, conservation practices, the environmental plans and it goes on and on. They are doing things, and it's excellent.

I don't know why you haven't had the input into the agricultural land policies, because you must have that. Did you have input into that? Have you a got a copy, and have you responded to that? If so, can we get a copy of your response? We just got this.

**Mr George:** We did have one of our members on that working group, yes.

**Mr Eddy:** So you'll have a response to it?

**Mr George:** We haven't analysed that document yet.

**Mr Eddy:** Okay. Well, I'll be looking forward to your response to it. I agree with your concerns about the Planning Act. We've got to do rural Ontario differently than urban Ontario.

**Mr Curling:** My concern too is about your comment about this omnibus bill. This is the kind of pattern of this government, to lump everything together, give you 15 minutes or seven minutes or five minutes for you to interact with the legislators on this.

**Mr Hayes:** Fifteen minutes more than the Liberals.

**Mr Mills:** Hasn't it always been like this?

**Mr Curling:** The comparative all the time is to state that previous governments didn't, but that's not the point. The point is really that they call it a comprehensive, an extensive and a wide bill, and the fact is that you haven't had an opportunity to even speak about the conflict-of-interest aspect of this.

Do you see actually where we would be able to complete this legislation—there are two questions I'm going to ask—within the time frame they talk about? Furthermore, do you feel that your comments here were right on and consistent, having regard to the fact that most of it will be left to regulations, which we haven't seen?

**Mr George:** I think that final point is a concern we raised in our presentation, and that's whether you have

time to do this or not. God knows. How quick do you people work? I know how quick I can work.

**Mr Curling:** Good. What about the regulation aspect of it? Do you feel that it will be adequately addressed in things that we haven't seen? It's a "trust me" government which we never see.

**Mr George:** That's always a concern. This is an issue where when you say, "Trust me," I'm not prepared to trust anybody at the moment on land use issues given the past record and the current record of some ministries.

**Mr Curling:** That's right. Thanks.

**Mr Villeneuve:** Roger and your OFA, thank you for being with us. This is of great concern to me right here, where the Minister of Natural Resources is telling us what a farmer is and what a farmer will be producing, both livestock and otherwise. What we have in Bill 163 is a one-size-fits-all, and that's of great concern. I think we have at the table there Alvin coming from Dundas county, Bill from Kent, a totally different area, and you're from the north, Roger. I think you're a living example of the divergence. Then we add the urban areas to the semi-urban areas and to the rural areas.

I think the two-tier effect has to come into play, plus we have to differentiate between Alvin's area and Bill's area and Roger's area, and I would suggest that there are probably two other areas in between there as well. Maybe we can get your comments on that.

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**Mr George:** Well, I think that's absolutely correct. We've always said that when it comes to land use policy, it's impossible to have one policy for the entire province, and it's clearly shown. We have the issue of the tender fruit lands, we have the issue around Waterloo, where they're very conscious about land use and there are some very strict guidelines.

The Ontario Federation of Agriculture can go along with both those things because it's local autonomy and the local people know what they want. They've lived there for generations, and I think that's the way it should be. Don't try and give a one-size-fits-all prescription to deal with every problem that's out there. Leave some flexibility in there and leave it with the people who know most, the local people. They're the ones with the common sense in this business.

**Mr Villeneuve:** I won't comment on your "common sense" approach. That comes up from time to time, and it does make a lot of common sense. However—

**Mr George:** I didn't call for a revolution.

**Mr Villeneuve:** How about a small revolt?

The wetlands policy: I was vice-chair of a task force that travelled the province for the last year, and that is probably the most serious area of concern, peoples' rights. And this is not only farmers now; it's people who happen to own rural land. In the area where Alvin comes from, which I very proudly represent, we have a lot of wetland, a tremendous amount of wetland. We're finding now that people are only finding out third hand that indeed they've been designated either buffer or wetland or both.

**Mr Wiseman:** It shouldn't happen.

**Mr Villeneuve:** Well, it has happened.

Could you comment on that? Because I know, of your 35,000-plus members, that's got to be one of the major concerns.

**Mr George:** Well, it is. As I say, I think it is probably the major concern this summer. As we've all travelled around the province, all we hear about is wetlands and ANSIs, areas of natural and scientific interest, and that type of thing. It really is somewhat bothersome to a farmer when he goes, in some cases, to sell a property to find out that there is, unbeknownst to him, a designation on there which restricts his land use. As I say, the Ministry of Natural Resources isn't paying the taxes and the mortgage on this land. It's a terrible thing.

Let me just tell you that we've sought a meeting with the Premier on this issue. We believe it is that important that the Premier of Ontario should be giving some direction to his cabinet ministers on this. The OFA is involved in a very unlikely coalition with the Ontario Federation of Anglers and Hunters, Ducks Unlimited and the Ontario Cattlemen's Association. That is a very unlikely group, with over 200,000 members, and each one of those groups feels absolutely vehemently that the province of Ontario is going berserk when it comes to adulterating rural peoples' property rights.

**Mr Villeneuve:** The amazing thing that I find, Roger, is that in my area at Lake St Francis, some of the prime waterfront property anywhere, bar none, erosion is occurring very extensively, 10 feet a year, and yet it's wetlands and it's been designated by the Ministry of Natural Resources as a spawning area. Local people tell us it's not a spawning area. They're losing 10 feet of ground, the trees are into the water, and yet they cannot come in and shore up their land.

They can't even go and build a house there, and yet it is some of the prime waterfront property that happened to be kept that way because someone wanted to keep it that way to be able to put up a home for themselves and their family getting close to retirement. They're being prevented from this right now, and I think that is a travesty.

**Mr George:** We've even got farmers who can't even clean out a drainage ditch which they helped to pay for because somebody from MNR spotted a fish swimming in the thing and so now it comes under the Fisheries Act. That is ridiculous too.

If we're going to keep a competitive agriculture in this province and if we're going to be able to face the world and be global traders and feed the nation and feed the world, then we have got to take a hard look at how many hoops we can ask our farmers to jump through. We'll jump through a few hoops, but if you keep on lighting hoops, and flaming hoops at that, then we've got some big problems and the farmers of Ontario are going to say, "To hell with you."

**Mr Villeneuve:** The South Nation River was a very slow-flowing river prior to being cleaned out. We now have a vibrant aquatic life. It was cleaned out some seven or eight years ago, nine years ago possibly. This is a



prime example of what rejuvenating a watercourse can do, and yet our bureaucrats cannot accept that. I have major problems with that.

**The Chair:** Mr Hayes would like to make some comments.

**Mr Hayes:** Yes, just that I was rather surprised when the question was asked if the OFA had been consulted with or had meetings dealing with the agricultural policy and the response we got back here pretty well indicated that they were not. I'm being told that there were three months of consultation by Municipal Affairs, and also the commissioner of course for two years, and there is some input. Also, isn't the OFA actually part of the implementation task force, on the technical committee?

**Mr David Armitage:** We're on a rural task force.

**Mr Hayes:** Which is part of it. I'm just saying that because it's—

**Mr McLean:** That's where the problem is. Do you think you consulted them?

**Mr Hayes:** No, no. I'm sorry, Mr McLean, but I think that the people who are here, Roger and others who are making this presentation, know that I certainly believe in consultation and input from people. I think we showed that very clearly when we did the agricultural finance review and we made sure that all stakeholders had some say and input into the situation, and I'm asking the question. It was almost indicated that there was no consultation or input from the OFA, and I'm led to believe that there has been. That's all I'm saying to you.

**Mr Eddy:** I would change my question—

*Interjections.*

**The Chair:** Mr Eddy, please. We've asked all the questions.

*Interjections.*

**Mr Hayes:** I don't think it's an unfair question. If that's the case, I don't like it.

**Mr Eddy:** No, I just ask that if they have comments on this, look at it.

**The Chair:** Mr Hayes said he feels that you've been consulted, and some of you may want to comment on that.

**Mr Armitage:** I think the question we're responding to was whether OMAFRA had consulted with us in developing the agricultural policy statement, and that was not the case. We did comment, as an organization, on the Sewell draft and on the document on land use planning from Municipal Affairs, and we are on the rural task force, but we have not been consulted and sat down directly with OMAFRA in developing that agricultural policy.

**The Chair:** Mr George and others, we thank you for taking the time to come and give your views and your brief to this committee.

#### SAVE THE ROUGE VALLEY SYSTEM

**The Chair:** We invite Save the Rouge Valley System, Mr Steve Marshall. Welcome to this committee, Mr Marshall.

**Mr Steve Marshall:** Mr Chairman, I'm not familiar

with the format. I provided two briefs to be distributed. I just wanted to specify that there are two briefs: One is somewhat more involved, it's nearly 60 pages, and it is in fact an information brief for members of the land use caucus. I'm providing it as background information in case anybody had questions about what concepts framed the recommendations I'm about to make.

**The Chair:** I think what you might want to do in 10 or 15 minutes is give the major highlights of the two reports that you want us to respond to and leave the next 15 minutes for members to ask you questions.

**Mr Marshall:** Yes, I'll follow that format. The other brief is a little shorter—it's six pages doublesided—and it's essentially a précis of the recommendations as they pertain to Bill 163. I would just go briefly through that. There are a dozen recommendations.

One comment I'd like to make is that there's a large number of technical amendments that could be proposed for specific wording on specific minor issues that have been raised by a number of parties. I won't be getting into those in detail because of the length of time it would take but rather focusing on the larger questions.

So the question I have is, would it be useful for the committee and would the committee desire a follow-up written contribution on the minor and very technical amendments and the recommendations we have for those on minor questions of wording that have been raised by a number of parties?

**The Chair:** I'm sure the members would like to have a copy of that.

**Mr McLean:** I'd like a copy of the recommendations and amendments.

**Mr Marshall:** The recommendations I have before you today are the larger ones, and the smaller, technical ones would follow.

Essentially, I think it would be useful to explain our perspective, being a little different from the group that was before me. We are a watershed-based group and our watershed covers nine municipalities, six local and three regional, within and around the largest urban centre in Canada. It also includes quite an extensive rural area and parts of the Oak Ridges moraine. It's very varied and distinct and the municipalities all have their own characters.

Over the last nearly 20 years we've been occupied in trying to protect the cultural and natural heritage with the existing planning system and also the one that prevailed before 1983. So the comments are based on more or less in-the-trenches experience of the problems that are being faced with the current, as it is now, planning system.

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Therefore, when we came to Bill 163 we were very pleased that the initiative is being undertaken and we consider it essential that it proceed. So in the comments I make noting deficiencies or absences or making recommendations, I don't want it inferred that we are in any way opposed to Bill 163, find it sorely lacking or grossly deficient or anything like that. We're very positive and very supportive of Bill 163 in general. So my comments then would flow from that perspective.

The first one I wanted to make—and unfortunately it's not paginated, but the third typewritten page of the short brief has the recommendation in bold, and just to briefly say that we had commented extensively throughout the commission process and on the consultation paper released in December and our feeling is that "consistent with" is really not strong enough. That's based upon an examination of the dictionary and also a consultation with the government officials who have cast their own interpretation of how it would be used. Therefore, our recommendation was to be clearer and to suggest the wording should be "shall be consistent with and conform to."

We're also quite well aware of the concerns of a number of municipalities and groups about the undue rigidity that may encourage in the planning system, so we suggested here briefly that there is an element of flexibility in three different degrees, even with this wording. I'm involved in the task force on the guidelines and it's quite, quite clear that there's an ample amount of flexibility, and this becomes clearer when you get down to trying to explain the policies with guidelines or viewing somebody else's explanation. There's a broad variety of interpretations. So there is considerable flexibility yet.

One of the concerns we have with the bill as it's written, particularly subsection 3(5), to follow on from the question about policies, was that the application of the policies in the new proposed wording is limited considerably from the previous wording, which was "have regard to." We are concerned that intentionally or unintentionally this may exclude a wide variety of municipal activities and agency, commission, board and ministry activities from being required to be, whatever the wording comes to, consistent with the policies. This would be problematic if one hand of the ministry wishes to do this and the other wishes to do that, and one has requirements to be consistent with and the other has a free rein, so our recommendations were to use the original wording from the existing bill in relation to whom the policy should apply and under what activities. The wording there is contained in it.

To back up to the general purpose of the act, and that's contained under the section that's headed "Legislation" and "Recommendation 3," it was our feeling that in dealing with lawyers at the OMB there's often a wide range of interpretations of what should be and some ambiguity, and it would be as well to reduce the ambiguity as much as possible to make clearer what the purpose of the act is, what the intent, what the drift, what the will is of the province and of the people of the province as expressed through it. So we've made some recommendations about wording in section 2. One of them is to drop "economic" from the definition of "sustainable development." This is simply based on the commonly used definitions of sustainable development which incorporate economic, social and ecological considerations. The rationale's contained there, so I won't elaborate.

The other is to make changes in clause 2(a), specific changes about what the objective is in protection of ecological systems and also the introduction of the concept of ecological integrity and biodiversity, which are

well-established in federal and international statutes and have been applied across the world, and also to emphasize the concept of restoration and enhancement.

Our perspective is, I guess, based on working with other groups that have looked at these issues, like the Federation of Ontario Naturalists, and simply making the measured and studied assessment that in southern Ontario—and I must admit we have—it's embarrassing to admit it, but it's true because of the location of our watershed—a somewhat Toronto-centred and southern Ontario-centred focus. So I couldn't interpret our comments as being universally applicable to northern Ontario.

However, it's our observation, and it's substantiated by a lot of simple fact finding, that southern Ontario is equivalent to the Amazonian basin after the rainforest is cut down, because that's pretty much what we've accomplished already. There's very little, about 0.5%, of the original Carolinian forests left. A shocking amount of the wetlands have disappeared, and on and on and on. We've been described as an ecological disaster area by the IGC in referring to chemical contaminants and so on. It's a really gloomy picture when you sort of stack it up and take a look at it.

Our contention is, the perspective of the Planning Act should not only be protection—that is one of the goals, recognizably one of them—of natural systems, but also the recognition that we haven't got a whole lot left. It's sort of like protecting your car after somebody's gone through it one dark night and taken all the parts off. If you really want to go somewhere, you've got to restore it. Our assertion is that the act should clearly indicate the objective of restoration. We've indicated in our recommendations various places these words might be introduced to accomplish that.

One of our concerns is the actual implementation of ecosystem planning. It's in the descriptive material that comes with the package released May 18. We're presuming that it is the goal—although there may not be a universal description of it—of most of the parties involved. Our analysis is, to actually achieve this, certain amendments to the act are required. They are covered under recommendation 5. That stipulates a process by which an official plan would be prepared.

At first blush, certain groups or perspectives may say, "My gosh, that's awfully rigid," but on second blush, it should be, "This is, in a sense, the normal process." It could be left to regulations to identify and describe. Our concern is that regulations can be readily altered, but if the act is amended consistently, then there's a security in the tenure of an act. It's not easy to tinker around with it. You have to stop and think very carefully, as this legislative process indicates, and therefore, it would be better to indicate how official plans should be prepared in the act as well as in the regulations. That is recommendation 5.

Flowing from that suggestion of a description about how official plans may be formulated to achieve ecosystem planning, among other objectives, is the question of: What on earth for? If you don't know what for and what you're working with, it's rather difficult, so recommendation—I think I've done two recommendation 5s. That's



okay because they speak to the same issue—5b put it—that the official plan “shall contain”—not “may,” but “shall contain”—“a description of” and so on and so on.

The comments under that indicate that there are different ways to do it. If you say, “Thou shalt do it this way,” it may not necessarily apply as well in northern Ontario as southern Ontario. The wording we’ve suggested leaves considerable flexibility for how to achieve that, but the gist of it is to describe what is there. Surely the basis for your actions is an understanding of what you have to act with. If you don’t have a description of, for instance, the environment in which you live, then it’s a little difficult to plan with objectives because you don’t know where you’re going because you don’t know where you are. So this is the basis of this recommendation.

The next section speaks to zoning controls, which are essentially the tools that a municipality would have to try and accomplish ecosystem objectives or ecosystem planning or simply planning. There are amendments in Bill 163 which speak to this. They seem to have a distinction between certain areas: Some, the municipality control all or any use of land, and some, only the type of building.

The concern we have is that if you can’t control the use of land, you can’t control or protect the actual natural features; ie, if you have a significant archeological site and you’re able to control the buildings on it and somebody puts a golf course there, you’re finished. The archeological site’s gone and there are no buildings. You obviously need to be able to control the use of the land and certain key areas that you really want to protect. If you can’t control that, you can’t protect them. So it’s a reasonably minor amendment that would have a major impact on the ability to achieve the objectives stated in the policy statements in the bill itself. The wording is there, plus the sections for, I hope, some clarity.

1540

Recommendation 7 pertains to an addition to Bill 163 which should address—in other words, make a continuous address of the questions raised through the subdivision process as well.

Recommendation 8 speaks to the protective bylaws which are conceived to be enabled under the Municipal Act. I’m sure this is going to raise a storm of concern across the province with the prospect of municipalities being able to tell you what to do, where, how and when, wherever you live and whatever you have. It is possible to take the viewpoint that if there could be a problem, there will be a problem.

We’d like to suggest that the protective bylaws under the Municipal Act, section 7, controlling the clearance of vegetation and so on and so on are tools that the municipality should use, but the definition of where they should use them and how they should use them can be phrased in such a way that there’s no risk of arbitrary or illogical or excessive attempts to control the use of private land, and there’s obviously a suggestion for some wording there. In the larger brief, there’s some description of the context and an elaboration on this issue, but that’s available for sort of research, if there’s any question about that recommendation as well as the others.

Our proposal is also that municipalities be required to implement these bylaws. How and where, in what fashion and so on, this is the discretion of the municipality, but they will be required to do it, because it’s been our unfortunate observation that although it is required, suggested, requested by the government, by the people, some municipalities refuse to do it. To refuse to protect provincially significant features is in essence an assault on the future provincial priorities on neighbouring municipalities and often on the people within the municipality who are affected by destruction on land other than theirs.

One of our concerns has been through experience with nine different municipalities and the processes they follow, that it’s often very difficult to act in the planning process if you’re excluded from decision-making meetings, if you’re denied access to information and if the decisions and the processes, however long and complex they may be, are not accessible to the public. It seems like an affront to our democratic traditions that this should be so.

Just to give you an example, it is possible in some municipalities that any information pertaining to an application not be available to the public, any discussions, decisions with agencies, boards and commissions, with a proponent, with the councillors, with the staff, be inaccessible to the public until everything is finished, everything is done, and then and only then at the statutory public meeting is the public ever aware of the processes that have gone under way and the decisions and so on. What they have been presented with are the fruits of that process, without any opportunity to be involved, and that really makes a mockery of public involvement in the planning process.

Then we have made some recommendations in section 2 to emphasize that the province is keen on effective, public involvement in the planning process—and I don’t think anybody would have an argument with that—that they have access to information, and we don’t have specific wording on where to place an interpretation of the term “meeting.” Often meetings can be held in camera and not called meetings, and then all of a sudden, it’s an official meeting and the decision is made, but any discussion or any deliberation or anything is just out of touch with the public, and it doesn’t seem like the right way to operate. Unfortunately, we don’t have specific wording to recommend how to address that, just to flag the issue.

Recommendation 11 does get into some detail about the different sections of the act that could be amended in a very simple form to ensure that information is available to the public and to agencies which are required or requested to comment so that they can make a substantive contribution to the planning process.

Another major problem we have with Bill 163 is the introduction of the concept that a regional or senior municipality would be able to dismiss an application to the OMB. Throughout Bill 163, those six reasons are repeated again and again; I didn’t type them out here. The concern we have with this is that, as it states in clause 17(29)(a), “...the approval authority”—senior

municipality—"is of the opinion that," and any of the six reasons could apply, there's no recourse. There's no revelation or explanation required. In other words, it seems a grossly quixotic and undemocratic suggestion that the council could decide that it doesn't like you and therefore your appeal was out the window, whatever its apparent merits, because it's simply the council's opinion that counts.

Our suggestion is that the OMB has a process: a process of appeal, a process of consideration. It's a well-established process. Modifications are suggested here that we don't have a great deal of disagreement with. This should be the venue where the merit of an appeal is decided, even under the broadened ability the OMB to toss it out, not the very council that often resents your contribution to the planning process and doesn't want to listen to you in the first place.

The introduction of the concept of the council tossing out a referral to the OMB in this fashion, as far as I know, was not recommended by any of the members of the public and agencies that consulted with the Sewell commission. So it seems like it popped out of somebody's head and I don't know whose, but I suggest it be popped back into some grey space somewhere and not be applied in Bill 163.

The conclusion could be read, so I simply won't try and précis it. I'll turn it over to any questions that may be raised.

**Mr Curling:** Thank you for your presentation. The kind of work that you have been doing in Save the Rouge has just been tremendous. It's been long going and sometimes rather frustrating, as you know, so I presume you would welcome some sort of formal strategy in how the Planning Act is done. As you said, you're in strong support of this Bill 163.

**Mr Marshall:** In general.

**Mr Curling:** In general. Oh, good, in general, because I didn't hear—

**Mr Marshall:** If we were in strong support wholly, we wouldn't be here to say, "Hey, change it."

**Mr Curling:** This is what I was going to say. I notice you said "strong support," and then there are some things that you'd like to see being attended to and changed.

**Mr Marshall:** Yes.

**Mr Curling:** That's of concern, because we have no problem at all with the fact of the description of the problem. What we have problems with—and I'm talking about my colleagues here—is the prescription of the process here.

One of the things that we're concerned about too, and I think John Sewell mentioned that too, is that his report and what he has presented has come down to some rather weak legislation, in putting in place some of the things that he'd like to see changed. Not that we are in full agreement with what John Sewell had said, but the fact is that some of the things you've said, we had thought that it would come in legislation, and this has been left up to regulation; things that we have not seen. We appeal to you again, Mr Chairman, to say to your minister and your government that it would be nice to see the regula-

tions since we're coming forward like that.

What is your feeling, the fact that most of the important part of this legislation, as is the practice of this government to do, is left to regulations? Again, as we said to the previous presenters here, it's a rather trust-me situation, "When we're all through we'll show you the regulations," when it's too late to see that it has been properly defined and has some sort of instructions which to follow. How do you feel about that?

**Mr Marshall:** We feel that it's problematic and that it could and should be addressed by amendments to 163, which would not be substantive or out of line for the committee to suggest. The problem we attacked in relation to the question of leaving things to regulation was the process and the content of the official plans, because we feel that with the proposal to have a comprehensive policy system, and a strong one to be consistent with, that the process of developing an official plan and the basic contents should be described in the legislation that describes the intent of the legislation. To go into too much detail would be inappropriate. The detail could be left for regulation, but the intent should be described in the legislation.

To that extent, we had suggested wording which I believe was very similar to what Mr Sewell has suggested, or vice versa—I was right the first time—and that if this is incorporated into the Planning Act through amendment, Bill 163, I think that would address the concerns with relation to the most important issue that's currently proposed to be covered by regulations.

1550

**Mr Curling:** Let me see if I interpret you—

**The Acting Chair (Mr Gary Wilson):** Very briefly.

**Mr Curling:** Very briefly, yes. You have no great concern about the fact that most of it is left to regulation, but just a little bit of changing in the legislation may adequately give you a comfort zone in that things are adequately looked after. Am I hearing you right?

**Mr Marshall:** Okay, to keep it real short, the clear intent should be expressed in the legislation. The details could be covered in regulation, but the intent should be clear in the legislation. We should know where it's going and what it's talking about, what the direction is and what the objectives are. The wording we suggested here—

**Mr Curling:** Yes, like minor variances.

**Mr Marshall:** But if you're talking about the detail, how it's to be implemented, and the specific wording, that would reasonably be left to regulation.

**The Acting Chair:** The third party, Mr McLean.

**Mr McLean:** We all can very clearly tell the difference between "may" and "shall." But in recommendation 2, "shall be consistent with and conform to" for "shall have regard for," if you had three different lawyers, you would probably get three different definitions out of that, wouldn't you?

**Mr Wiseman:** How about six.

**Mr Marshall:** First of all, it's excellent that it's being strengthened to be "shall be consistent with." Pick any



dictionary and you get different definitions too, or at least a different number. In the Concise Oxford that I have, it's three different definitions, and they go different directions. So our proposal, "consistent with and conform to," does tend to narrow down the objective. The less you leave up to lawyers to waste all our money with the better.

**Mr McLean:** That's probably the reason why it's put in there by the government, so that the lawyers will have lots of leeway to dicker and fool with it.

You talk about the purpose of the act:

"To promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this act;

"The term 'sustainable development' is widely used if not understood. The term 'sustainable economic development'"—you said here—"is either entirely new, begging a definition, or an oxymoron." Which is it?

**Mr Marshall:** I'm not a scholar, but I haven't seen the term "sustainable economic development" widely used and accepted. It's sort of a mutation of "sustainable development." Supposedly inherent in the concept of sustainable development are economic considerations, social considerations and ecological considerations, jointly, unseverable, because they belong together. To throw in "economic" is like trying to turn a car into a dump truck; it's a little hard.

**Mr McLean:** That's something like this legislation. Thank you.

**Mr Wiseman:** Thank you for your always thorough presentations of issues. I want to pursue that economic question as well, because I see the "economic" as narrowing it as opposed to keeping it a broad definition of what sustainability should be all about. That, I think, is an important issue, and I'm pleased that you raised that here.

I'm also pleased that, other than me, you're the only person who's talked about "will conform to" or talked about that kind of an approach to the question of "shall be consistent with," and it's nice not to be alone sometimes.

When we deal with councils—and that's not to imply that they willingly or knowingly do anything wrong; they genuinely try to come to solutions to problems—this whole question of where they hold their meetings is really quite difficult to nail down. For example, there have been allegations made in the local papers in my riding that certain people had dinner with certain people and certain people didn't go, so they're making allegations and that kind of thing.

How do we nail down how people relate? Is it possible? Does the legislation go far enough to include these types of meetings, to really give the public a handle on what actually happens in council?

**Mr Marshall:** It's not specific enough. I think that's been picked up by staff at the Ministry of Municipal Affairs as well. We didn't have any suggestions about where to tuck it into the act. I guess I would make the observation that if you're conducting town business, and especially if town staff are in attendance, then one can presume it's a meeting in the sense of fulfilling your

responsibilities as a councillor, and that could be anywhere or anything. If you're having a private discussion with another person, that's nobody's business but yours.

In Markham, for instance, they sometimes have what they call "work sessions." All the staff are there, all the councillors are there, they're dealing with town business; it's not public, because it's a "work session." Then when they've done all of their business and all they have to do is rubber-stamp the decision, poof, they open up the meeting. This doesn't seem to fulfil the spirit of the democratic process. So I'm not really sure what definition would fit, but it is a problem.

**The Acting Chair:** You've got about 30 seconds left, Mr Wiseman.

**Mr Wiseman:** Then I'd just like to thank Steve and the Save the Rouge for all of the invaluable contributions they've made to the province of Ontario in helping to establish the Rouge park and the agricultural preserve; it's in my riding.

**Mr Marshall:** Yes, and in Alvin's too, in part.

**The Acting Chair:** Mr Marshall, I'll speak on behalf of the committee and thank you very much for your presentation. Did you want to add something?

**Mr Marshall:** The only thing I'd like to repeat is that I'll be forwarding the technical suggestions about wording changes on a host of minor issues soon.

#### REGIONAL PLANNING COMMISSIONERS OF ONTARIO

**The Acting Chair:** I call forward Mr Nick Tunnacliffe, representing the Regional Planning Commissioners of Ontario.

**Mr Nick Tunnacliffe:** My name's Nick Tunnacliffe, planning commissioner of the region of Ottawa-Carleton, and today I'm representing the Regional Planning Commissioners of Ontario. On my right is Sally Thorsen, who's the planning commissioner for the region of Waterloo.

I think you've had distributed a copy of our full brief, which is several pages long, and a copy of the remarks which I'm going to make.

The Regional Planning Commissioners of Ontario represent the planning departments of 12 regions and districts in Ontario and the restructured county of Oxford. Approximately 70% of the population of Ontario lives in our municipalities, and I'll hazard a guess that probably about 90% of the development and growth going on in Ontario takes place in those municipalities. Our municipalities are responsible for providing major infrastructure such as water, sewers, roads and transit, which have enabled our cities to grow and prosper.

Fundamental to making things work are the planning and financing of our cities. By any standards, we believe the regional government system in Ontario is a success. Thanks to farsighted and creative planning, Ontario communities are the envy of the world, and thanks to conservative financing arrangements, most regions have better credit ratings than the province. My point in providing this background is to stress the importance of building on this legacy.

While planning has done much to create livable

communities and workable cities, as practised in Ontario, we believe it can be improved significantly. The Regional Planning Commissioners of Ontario contributed to the Sewell commission by submitting five briefs. We salute the province for initiating that process, we support many of the recommendations of the commission and we congratulate the province for moving forward expeditiously with Bill 163.

However, we have serious concerns about the bill, which are discussed in detail in our brief to you, which has 26 recommendations, numerous detailed wording changes to the bill in annex II and a detailed commentary on the Sewell commission recommendations in annex IV. Time does not permit me to deal with all the points we wish to make. Instead, I want to deal with three highlights.

#### 1600

First of all, the question of Metro Toronto: The bill rightly and properly assigns the power to approve local official plans and subdivisions to most regions. We support this. We also support the view of county planners that the power should also be assigned to counties. However, the bill has a great anomaly: Metro Toronto. Of all municipalities in the province, Metro Toronto deserves better. The largest in terms of population, the oldest regional government, recognized worldwide for its planning—and I'll just say that John Gartner, the planning commissioner for Metro Toronto, can't be here today because he's entertaining planners from Chicago and showing them how we plan—it's already got its own directly elected councillors, and yet the province sees fit not to give it the same powers as the other regions will have. Logic tells us otherwise. This should be changed.

The government recently enacted Bill 143 to change responsibilities and the method of election of regional councillors in Ottawa-Carleton, where I come from. Locally, there was significant opposition to this move. However, the provincial government stuck to its guns and did the right thing. This time, we urge you again to do the right thing: Give Metro its due and amend the bill to give Metro the same powers as every other region.

The next point I want to raise relates to procedure and timing. This may be a bit complicated, but it is a very important point to us. The Regional Planning Commissioners of Ontario supports the province's desire to streamline the planning process and, within defined parameters, to increase opportunities for consultation with agencies and the public as part of that process. The importance of a speedy decision-making process relates to economic development in Ontario and our ability to compete nationally and internationally.

The main way streamlining is introduced in the bill is, first, by setting time limits, which we support, and second, by having the approval authority give notice of its decision at the end of the process, which will then be subject to automatic appeal to the Ontario Municipal Board. We see three main flaws in this process.

Firstly, there is no provision in the bill to ensure that everyone's position is on the table so the approval authority can deal with the issues until the end of the process, ie, when the notice of decision is given. In fact,

the bill specifically exempts public bodies from giving their position early in the process.

In our alternative process, which you'll find on pages 10 and 11 in the detailed brief, we suggest a requirement for early circulation prior to adoption for official plans and circulation and notification with a defined date by which all comments and objections should be submitted to the approval authority for subdivisions. The object should be to give the approval authority four months to solve problems and negotiate issues.

Secondly, the bill as written requires notification of the decision to all those who have been part of the process and anyone who may have an interest in the proposed decision. At the moment in Ottawa-Carleton, we circulate 38 agencies. For a major official plan amendment, we will have perhaps 20 community associations plus assorted individuals. For our last comprehensive official plan review, the mailing list was in excess of 4,000 people and groups. The amount of paper and the tracking of the responses within defined time limits boggles the mind. If you agree to amend the bill along the lines suggested in paragraph 1 above, we suggest you also agree to amend the bill so that only those public bodies and individuals who maintain their objection should be notified of the decision at the end of the process.

It is common practice for public bodies, once their concern has been addressed through, let us say, a condition in a plan of subdivision or a modification in a local official plan, to send a letter confirming that they are happy with the outcome. In this eventuality, we believe there is no need to circulate notice of the decision.

Thirdly, the bill provides that where notification by the approval authority is given, public bodies and individuals can have an automatic appeal to the Ontario Municipal Board. We are concerned that this will lead to a substantial increase in the number of Ontario Municipal Board hearings.

In other parts of the bill objectors may request a referral to the board, and the tests to which this request is put have been considerably strengthened in the bill. We support this strengthening and in fact, in the body of our brief, suggest two other tests which we recommend be added.

In order to reduce the number of OMB hearings, we recommend that in cases where the bill now provides for automatic appeal to the OMB, eg, when the approval authority is dealing with local official plans and subdivisions, this automatic appeal be changed to a referral request and the referral request be subject to the tests set out in the bill.

The third major point that I want to deal with is the responsibility for subdivision approval. The bill provides that regions, except for Metro Toronto, and separated cities are responsible for subdivision approval. However, the explanatory brochure on the Planning Act reform package refers to the possibility of further delegation to local municipalities. We believe that this should not take place for six compelling reasons.

First, the system is working very well.

Second, subdivision and conditions associated with



draft approval is one of the main ways of implementing provincial policy. Having a limited number of regions, districts, counties and cities to work through will be easier and more efficient for the province as compared to dealing with 846 municipalities.

Third, experience has shown that efficiencies to be gained from economies of scale and experience are significant. A planning operation dealing with, say, 20 to 50 subdivisions a year is infinitely better prepared to deal with the nuances and difficulties that arise in each application compared to an organization dealing with, say, less than 10 applications a year. To have an upper-tier municipality or city with dedicated staff dealing with many subdivisions will result in a much more streamlined operation than if each municipality were to deal with a small number of subdivisions a year.

Fourth, we believe the level of municipal government responsible for water and sewer systems and treatment plants should be responsible for subdivision approval so that the approval of subdivisions can be tied to the availability of capacity in the treatment plant. Regions are responsible for these services, and they should be responsible for subdivision approval.

Fifth, beyond the efficiencies to be gained by a large operation are the fundamentally different responsibilities of the two levels of municipal government in a two-tier system. Each is entirely legitimate; each has its role to play in providing the citizens of Ontario with the best possible service. In our view, the role of the upper tier is to define planning policy for its municipality, having regard for provincial interests and policy, regional circumstances, goals and objectives, and to provide the conditions and opportunities for development. These conditions and opportunities, in our view, include the provision of infrastructure and the blocks of land in a state ready for development.

On the other hand, the role of the lower tier is to approve the specific development on the blocks, its design and layout, its standards, and to provide the services it requires, which are the responsibility of the lower tier, for example, parks.

Sixth and finally, conditions associated with subdivisions are integral to the achievement of regional objectives and policy. Passing the function to the lower tier will make it extremely difficult to implement these objectives and policies. It will result in a fundamentally more confrontational process with more appeals to the Ontario Municipal Board as both province and upper tier seek conditions to implement their policies.

We understand there is considerable pressure from some lower-tier municipalities to amend the bill to allow delegation of subdivision approval to the lower tier. If you want an efficient, streamlined planning system, if you want the province to retain the ability to implement its policies through upper-tier official plans, we urge you to retain the link between responsibility for subdivision approval and the direct approval power the minister retains over upper-tier official plans. Therefore, we strongly urge you not to amend the bill to provide for further delegation of subdivision approval.

I've touched on three main highlights. However, all 26

recommendations are important to us. We congratulate the province for moving forward on Planning Act reform. This is a valiant effort which needs some refinement. If the changes we recommend are not made, reluctantly we will not be able to support the package. We support the policy statement—not every word, but we realize a decision has been made and we all need to move on—but we believe you are not empowering municipalities sufficiently and you are not streamlining the process sufficiently. Therefore, we recommend you improve the package by incorporating the recommendations in our submission.

1610

**Mr McLean:** This morning we had the board of education in. The board wants to have some input into the approvals with regard to subdivisions and planning. There does not appear to be anything in here that gives them any input or allows them to have the input other than what they want to do on their own.

The other area I want to zero in on, and there has very little discussion about it, is our connecting links and our road systems.

When I drove down here yesterday, I said to myself, "If this area doesn't do something with regard to the road system, where are we going to be in 10 years with the development that's taking place," as there is now. I'd like your opinion with regard to future development with regard to roads and how they could be part of the overall planning system, because there's nothing in Bill 163 that really relates to planning the roads and future transportation systems. I'm wondering how that can be worked in.

**Mr Tunnacliffe:** Okay, on the first matter, the boards of education, it's common practice for regions, acting under the delegated approval of the ministry, to circulate all boards of education with proposed developments. We certainly do, and get comments back on requirements for school sites. The conditions of the subdivision approval provide usually for a three- or five-year period for the boards to exercise an option to pick up the school sites.

I haven't heard any complaints. I don't know, Sally, if you've heard anything in Waterloo. So I was surprised to hear that they've got a concern.

**Mr McLean:** What are your thoughts and considerations with regard to the road links, the connecting links and the road systems that we're going to be—with the traffic sitting now, what's going to happen if we allow subdivisions and approvals to give the municipalities the approval authority? What's going to be in there with regard to our road systems?

**Mr Tunnacliffe:** There are several aspects to this, but within urban areas I think the policy statements that go along with the package speak very well to the need for—I don't think it uses the word, but a more "balanced" system of transportation with more emphasis on transit, walking and cycling.

Our experience in Ottawa-Carleton is that it's extremely difficult to find the money to build all the road facilities that might be required for expanding urban areas, and therefore it's important to adapt the urban area so that more of the load can be taken off the road system

and put on transit, walking and cycling.

The interurban travel is something else, which is something that by and large the province is responsible for, and again that's a matter of funding and you have to address it in terms of the 407 and tolls and user-pay and other ways of creating financing.

**Mr McLean:** The last question I have is with regard to the lower tier and the upper tier. The lower-tier planning has got to coincide with the upper tier, in order. Really, what is the sense of a lower tier having an official plan and zoning bylaws if the upper tier is going to have the final approval on the decisions anyway? What is the advantage? I mean, I always thought the lower tier was closer to the people; they were where the decisions were made. We seem to be taking that away now.

**Ms Sally Thorsen:** I think the difference is that the upper tier is responsible for developing the major policy. They don't get into detail. Upper-tier plans deal with policy issues and set the framework within which the local municipalities do the detailed planning.

**Mr McLean:** Do you think there should be both?

**Ms Thorsen:** We think there should be both. It's just that there's a difference emphasis.

**Mr Villeneuve:** Thank you for your presentation. You represent the group known as the regional planning and planners' commission of Ontario.

**Mr Tunnacliffe:** Regional Planning Commissioners of Ontario.

**Mr Villeneuve:** AMO has come out pretty strongly against Sewell across the board.

**Mr Tunnacliffe:** I don't know whether I agree with that. They've come out against certain aspects.

**Mr Villeneuve:** Certainly the smaller municipalities are very concerned, and primarily because in Bill 163 it says that the Planning Act, which states all planning decisions, "shall be consistent with" provincial "policy statements." That is regulation, and we're not of course dealing with regulation. Does that concern you at this particular point? We have 163, a multi-tentacled bill, an omnibus bill. Regulations could be very, very stringent here.

**Mr Tunnacliffe:** There are two aspects to your question. There is the question of regulations, and yes, we're concerned that we haven't seen regulations, and we certainly would like to see them and have input into them before the bill is promulgated.

The second question really relates to the "shall be consistent with," and it sort of gets to the nub of the relationship between the province and its constituent municipalities. The province has talked in its explanatory brochure about empowering municipalities, and one of our concerns is that in fact this bill doesn't empower sufficiently. I mean, empowering, in my mind, means an ability to give away responsibility so people can make mistakes.

Municipalities have been too tightly controlled, and that's why on pages 2 and 3 of our detailed brief we in fact are suggesting a couple of changes to the bill to address this matter of "shall be consistent with" to give

what we think will be—I don't really want to use the word "flexibility"—more ability for the municipalities in the different parts of the province to interpret provincial policy as they see fit for their particular area.

At the top of page 3 we're suggesting that we add to the bill some lead-in words. We'd like you to add, "...as may be prescribed shall be consistent with the spirit and intent of the policy statements issued under subsection (1)," and the third recommendation would be to add to the bill, "Policy statements provide certain strength of direction but may be tempered by reasonable flexibility in local application." Those words came directly from the Sewell commission, and it was the Sewell commission's explanation of what "shall be consistent with" means. We would like to see those in the bill itself.

**Mr Villeneuve:** AMO's concern is loss of autonomy. I think that may be the word you were looking for here.

**Mr Tunnacliffe:** Yes.

**Mr McLean:** Could we have a definition of the word "spirit"?

**Mr Tunnacliffe:** I think you have to read it, "the spirit and intent." The "direction" I think would be a synonym.

**Mr Mills:** Thank you for coming here this afternoon. I listened and read your presentation with some degree of interest, and there are a couple of things I'd like to say on the record. You say the regional government system in Ontario is a success. Well, that's a matter of debate in this area. I can tell you that a lot of people have serious problems with the regional government of Durham per se.

I'd also like to point out that I like those conservative financing arrangements, and I'm sure my friends across the way like that. They have better credit ratings than the province. I think that's true, but at the same time I think you should agree—I hope you will—that the credit problems with the province are far more severe and problematic than they are with the regions. I'd just like to put that on the record.

I understand and I hear your support for what we're doing, Bill 163, and apart from your 26 recommendations, which are a little monumental, I hope that in the long run your association of planning commissioners of Ontario will see fit to be able to support this if not all is done but if most of it is done, or that you may have some change of heart in this, because I think—and I think you've already said that—this is good government and it's a good bill.

**Mr Tunnacliffe:** Regardless of whether we support it or not, we're going to be the ones on the front lines who will have to implement it, and our concern is that we are creating a more bureaucratic process and a more perhaps litigious process, with more appeals to the OMB. That's really a fundamental concern that we've got, because that, in my view, wouldn't be in the best interests of the province or the people who live here.

1620

**Mr Mills:** I, like my colleague over there—sometimes I do agree with those fellows over there, believe it or not. Having spent a number of years on municipal council, I do believe that municipal councils have that hands-on,



grass-roots decision-making and I don't like to see it taken away from them, to be quite honest. That may be contrary to what is the government's position, but I still think local municipalities and the politicians really are close to the feeling of the people and I don't like to see them taken away one step up to a higher tier of government to make these decisions.

**Mr Wiseman:** It's interesting that the hearings are breaking into two groups of people: Those who think regional councillors and official plans and the system should be streamlined in a way that gives that group of people more decision-making power and authority; and the other group of people who do not trust them, don't like what they've seen in the past, don't believe that official plans have any kind of teeth in them and find themselves disfranchised when it comes to trying to make any kind of presentation to a council because they see themselves as being impotent in that council because they're elected and have decided what's going to happen. That's what's happening. I tend to lean to the latter as opposed to the former.

I think what has to happen is some way that people as a group, when they feel threatened by official plans—I'll just tell you quite bluntly. The developers get everything and the community gets nothing when it comes to official plan amendments. It seems that everything that they want, they get, and planning does not take on a holistic, sustainable—

**Mr Curling:** There you go bashing developers again.

**Mr Wiseman:** It's not the developers. The developers are there to ask what's in their economic interest. Councils are there to act as the check and a balance in the process to make sure that the public good is carried out. And whether you agree or not, the view of most citizens is that the balance has been tipped in favour of the developers and that what happens, on more than one occasion, is that subdivisions are changed, official plans are changed; that there is no way that the citizen can know for sure that when they buy a piece of property and the zoning next to them is in place, that's going to be the zoning when they move in, because the council will change it, and if it doesn't, then maybe it goes to regional council and it changes it or it goes to the Ontario Municipal Board and it changes it.

For me, that is the element that we need to deal with in this bill. So I don't agree with AMO and I don't agree with this "shall be consistent with the spirit and intent of," because that's just as watery as "will have regard for," in my opinion. I think it should be, at the very least, "will conform to."

**Ms Thorsen:** I think this was a point that was made on numerous occasions before the Sewell commission. People came before the commission and said: "We want no meaning no. We want some recognition that policies should be consistent and we know where we are." I think it was on that basis that the commission formulated the policy statements that have been largely adopted and published by the province. The fact that those policy statements are very clear and set out quite strongly what the province sees as being important and as policies that should be carried forward through upper-tier plans and in

turn through the local official plans I think is one way that we can ensure that people do have some consideration or some feeling of safety that policies will remain consistent over a period of time.

I think you have a very good point, and it was recognized by the commission, but there was also an understanding on the part of the commission that there needs to be some recognition that it's hard to define for every eventuality, so there needs to be some opportunity for interpretation.

**Mr Grandmaître:** Mr Tunnacliffe, you claim that you did appear before the John Sewell commission. Is it five or six times? I forget exactly.

**Mr Tunnacliffe:** We had five briefs, yes.

**Mr Grandmaître:** And I'm sure that, as the chair, you were speaking for all regions and districts in the province of Ontario, right?

**Mr Tunnacliffe:** Yes. It's quite amazing the sort of consistency of views that we had among us.

**Mr Grandmaître:** What was your argument before Mr Sewell, to include Metro Toronto, or to treat Metro Toronto like any other region? What was your argument?

**Mr Tunnacliffe:** In terms of an argument before Mr Sewell, I don't think he made a recommendation that's come out as we've got here in the bill. But I think it really comes down to the fact that Metro is a large municipality, with dedicated planning staff. Consistently, it's planned well. It's world-renowned for its planning. Yet here we have a situation where the government appears to be saying it's not fit to plan. They want to retain the control, and to me it just seems a ridiculous situation.

**Mr Grandmaître:** And no explanation was ever given.

**Mr Tunnacliffe:** No, not at all.

**Mr Grandmaître:** Very good. You say on page 4:

"Subdivision and conditions associated with draft approval is one of the main ways of implementing provincial policy. Having a limited number of regions, districts, counties and cities to work through will be easier and more efficient for the province as compared to dealing with 846 municipalities."

I hope you're not promoting the abolition of local government.

**Mr Tunnacliffe:** Not at all. We recognize regions are two-tier municipalities, but we believe that the function of the upper tier is different from the function of the lower tier, and I address that on the same page in point (v). If the upper tier provides for the infrastructure and the subdivision into blocks, then the lower tier can concentrate on the detailed development approval, the design of the building, where it's located on the lot and so on, and then providing the services for which it's responsible.

**Mr Grandmaître:** Yes, and on page 5—I'm sorry, I left this out—"On the other hand, the role of the lower tier is to approve the specific development," so on and so forth, "the responsibility of the lower tier, eg, parks."

**Mr Tunnacliffe:** Yes.

**Mr Grandmaître:** So you're diminishing the role of local government.

**Mr Tunnacliffe:** I see great improvement if the two levels of municipal government were able to separate their responsibilities and concentrate on what each is good at.

**Mr Grandmaître:** Yes. I agree with you.

**Mr Tunnacliffe:** And as Sally said, the role of the upper tier is to provide the infrastructure and that urban structure and the overall policy direction, and then the lower tier can get on and approve the development on those blocks of land. They issue the building permits and the design and so on.

**Mr Grandmaître:** Thank you. I've got to pass on.

**The Chair:** One minute and a half.

**Mr Eddy:** Well, I'm short-winded, as you know. Thank you very much for your presentation. You certainly brought forward some very important recommendations that should be considered, and I, like you, don't understand the Metro Toronto thing and would be interested in the government's view on whether they will or will not name Metro. We'll leave that to them.

I'm interested in two-tier planning. Of course, the act does not require two-tier planning. It requires plans at the upper tier and they're optional at the lower tier.

I'm very interested in the Waterloo region system, which does not, as I understand, and correct me if I'm wrong, have an official land use plan at the upper tier but a policy plan, it's described as. I really think that upper-tier municipalities should be given the option of having a land use plan or a policy plan. How do you feel it's working in Waterloo? Are you the only upper tier that is that way—other than Middlesex county, which is a county of course—and what would your view be in relation to the new act: to continue or not to continue that way? I hear good reports about it, by the way.

**Ms Thorsen:** We've found it works well. We've operated with a policy plan since 1976 and we are now on our third regional plan, which continues to be a policy plan. I think our relationships with the local municipalities are, on the whole, extremely good.

**Mr Eddy:** That's what I note.

**Ms Thorsen:** We do not get into land use issues. We concentrate on policy, and that, I think, is what the new act is aiming at, to ensure that the policy issues are covered by the upper tiers and that it's up to the local municipalities, the lower tiers, to put those policies into action through land use.

**Mr Eddy:** Yes, I see. Thank you. On page 4, just a clarification. Pages 4 and 5—

**The Chair:** We ran out of time.

**Mr Eddy:** —it says, "having regard for provincial interests and policy." Do you mean "be consistent with"?

**Mr Tunnacliffe:** If that's what the legislation's going to say, yes.

**Mr Eddy:** Yes. I didn't know whether that was—

**The Chair:** We find your brief very informative and we thank you for coming before this committee.

## 1630

### DURHAM WETLANDS AND WATERSHEDS SAVE LYNDE SHORES

**The Chair:** We call upon the Durham Wetlands and Watersheds, Mr Glen Rae and Mr Tom Moore.

**Mr Glen Rae:** Thank you. There was a bit of a mixup today with one of our groups cancelling, but we're representing two groups: Save Lynde Shores and Durham Wetlands and Watersheds. On behalf of our groups, we thank the Legislative Assembly of Ontario for the opportunity to speak today.

Our group formed in the spring of 1991 with great concern over the protection of a class 1, provincially significant wetland, Lynde Creek and its watershed, and a proposed development of 6,000 people immediately adjacent to this sensitive area.

We have found that the wetland policy lacks one of the main considerations, that being the importance of the adjacent lands as a wetland function, as many species depend upon both water and land throughout their life cycle. As we know, we have lost 70% of those valuable areas and can't afford to lose one more.

Regarding Bill 163, we found that the Ministry of Natural Resources and conservation authorities base their comments on each specific proposal and generally don't relate it to previous or potential developments and their associated impacts. Also, a number of issues affect the ability of conservation authorities to work effectively in ecosystem conservation. Their limited regulatory powers—focused primarily on flood and erosion control—are among several factors that severely restrict the ability of conservation authorities to protect natural areas and systems.

Also, most members of an authority are appointed by municipal council and are frequently municipal politicians and staff. In most areas, it means that few authority members have the appropriate training or commitment for ecosystem-based planning and natural resource management. More consideration should be given to habitat in planning and assessment and the construction and maintenance phases of development which will impact habitat. We must set up an urban wildlife program, the key being provision and care of habitat.

Society needs to move to an anticipate-and-prevent approach to environmental problems rather than the conventional react-and-cure.

**Mr Tom Moore:** I'll jump right into the sections that I want to make comments on so that we will have lots of time for you to ask questions, and I hope you will.

Starting with number 2, just as a preface here, I should have put an explanation at the beginning.

Number 2: Improving fundamental protection of the environment. I see there's an error already in there. "Economic" should be crossed out. So what I'm saying is, how it should read is, "1.1(a) to promote sustainable development compatible with a healthy and sustainable natural environment..." the reason being that imposing the descriptive use of economic developments as written creates an incompatible position between forces of development and the environment. The intent of the



subsection will not change by removing any economic references. Also, there is a need to place the environment on an equal playing field with development by defining the environment as also sustainable.

Again, these reference sections are as per the act or the bill.

"1.1(b) to provide for a land use planning system led by provincial policy statements that achieve their intended goals." The additional phase mentioned about this subsection is needed to increase information to the users of the Planning Act.

"2. The minister, the council...shall provide for, among other matters" rather than "shall have regard to." "Shall have regard to" is not emphatic enough to ensure the list of matters (a) to (q) are adequately addressed by those who are required to act. The change to "provide for" will ensure results on the matters mentioned.

Subsection 3(5) is a very popular one and I believe this is a direct quote of CELA, who I believe are—I'm not sure when they're making a deputation. Again the purpose is to ensure that all councils, ministers, local boards and the municipal board comply with the policy statements. They are all listed. I think the inference is that not all the ministries have to comply with all of these policy statements.

Subsection 14.1(4), remove any limitation to the composition of the planning authority. There is a need to keep options open and not limit the planning authority to just municipal councillors. There are many experienced and educated resource individuals who should be considered rather than limiting selection to a non-specialized councillor.

My section 3: Optimizing the preparation of official plans. Again it's just a general statement because I found it difficult to really put words in. Just as an aside here, it was rather laborious reading, I'm sure you'd all admit, and unless you're a lawyer, I guess you're not too thrilled at this.

There is a general yet important need to see that official plans are prepared with some form of permanency. This is especially true when addressing land types that reflect the natural environment. Two specific types are open space and hazard lands. All too often, these are only temporary designations which can be changed through amendments to official plans. The open space may be developed into urban areas when it previously was agriculture. The hazard associated with hazard lands can be removed through improvements and subsequently developed. We're finding out that this is exactly happening in Whitby at this point in time.

Protection of lands that are categorized as having environmental significance can only be protected through—whoops, there's something missing. I'll have to think about that and I'll come back to it.

Section 4: Citizens' input to the planning process: The general impression from citizens who try to be involved in municipal planning, whether for their own benefit or others, is one of extreme difficulty and who meet numerous planned and unplanned obstacles by planning authorities and councillors.

A major improvement in understandable communications is necessary to encourage participants in municipal affairs and will result in a community that is informed and not one that is complacent, such as we have in many instances today.

#### 1640

Notification: The general public, whether they have a specific interest in ongoing municipal activities or a general one, find that the onus is put on them to become aware of what is happening in the community, ie, the municipal government. Some communities give notice of regular planning and council meetings, including agendas and minutes, or by law give notice by local papers. However, there are many activities that are not announced, except a few, so therefore the public cannot attend.

I would endorse the Sewell commission's examination of this problem and the recommendation to have a public registry created to help remove these problems. Recommendations 75 and 76 are also needed to encourage public participation. Recommendation 79 has numerous proposals identifying the need for public meetings that should not be overlooked. Appropriate time limits must also be addressed to give time for individuals to prepare responses—see information access below.

On public meetings: More affairs of the community should be heard by public meetings. Requirements to hold public meetings as in recommendation 77 by the Sewell commission, should be adopted and incorporated into the bill. The community should also have the right to attend councillor and planning meetings whether they are public or not. Why should there be any secrets held from the public? The council must also be accountable for its decisions.

On information: Access to relevant information as soon as an application is made is important to the public. Therefore, maximum time is made available to the public to allow for research and compilation of comments and arguments. Freedom of information is not the appropriate tool to use when time is of the essence. As electronic communication becomes more available to the public, access to information through the user net could be a way of improving the timeliness of getting information. The committee should carefully assess where this is needed in the bill. The old adage "governing by the people for the people" is most appropriate here.

Under appeal rights, it is difficult to know whether the bill makes adequate appeal options available where there is a need. Sections 29, 38 and 41 do not appear to provide for appeals. Also the prerequisite to have attended a public meeting is far too stringent. The Sewell commission's recommendation 79 is also supportive of the need for the right to appeal and should be adopted. Recommendation 84 should also be examined again to consider incorporation in the bill.

Finally, on intervening funding, many small concerned citizens' groups need access to funds to allow them to become a voice in municipal affairs. The public officials appear to have unlimited budgets to present their case and to push their bias down everyone's throat. The elected ones forget that they got there by the very people they

may be opposing. Only reasonable costs should be imposed on the public when requesting information. A charge of 68 cents a page for a photocopy is really unreasonable.

Most of these things that I've mentioned we've experienced just over the last year within Whitby.

**Mr Eddy:** Thank you for bringing your concerns to the committee for discussion. I noted your concern in the statement about open meetings. Many councils do follow the rule that all council meetings are open except for very specific items, three items, and committee meetings are as well. It's a concern that you'd find that is a concern in your area, that meetings are not being held in open meetings.

**Mr Moore:** The one fact is that we've been told at some meetings we've attended, "This is not a public meeting." We don't literally get kicked out, but you certainly don't have an opportunity to say anything.

**Mr Eddy:** Oh, I see what you mean. So you're not on the list to speak.

**Mr Moore:** No. I know they've held private meetings. In fact, they've even been announced, that there are private meetings. It just makes you question what is being discussed that might be of specific interest to the public.

**Mr Eddy:** You mentioned the designation of some land as open space and hazard lands. Open space is indeed a holding zone, as I understand it, for municipalities to use it, but when you're preparing an official plan and have a lot of open space, it leaves it open, as the term says.

**Mr Moore:** Could I use an example? The region has an open space situated halfway between Whitby and Ajax—I think it's approximately half in each—and I'm told that space was squeezed when the original plan was being put together. The purpose was to provide a link between the Ontario shoreline and especially the Lake-ridge moraine, and there's also the Iroquois shoreline. What's going to happen down the road if all this open space gets blocked up with development?

**Mr Eddy:** Right.

**Mr Moore:** That certainly is not meeting the intent of the region's plan. If you see the definition of "major open space," it's certainly not called a holding place for further development.

**Mr Eddy:** I like your proposal that for planning purposes there be committees of council with citizen membership on them to deal with planning matters. We used to have planning boards in Ontario, but a previous government in 1983 eliminated them. It was because it was seen that control was in the board and not in council, but I think there's room for a variation of that.

**Mr Moore:** Yes. I was aware of that too. That's why I'm bringing it up now.

**Mr Eddy:** Is that a better system in your opinion, the other way?

**Mr Moore:** I think there has to be some way for public interests to be voiced, and if that means maybe the public suggests people or canvasses the community, such as they've done—there's a monitoring committee that

they're setting up right now for one area.

**Mr McLean:** Thank you for your presentation. I want to find out what ministry is charging you 68 cents a page to do this.

**Mr Moore:** The region of Durham.

**Mr McLean:** It's unbelievable. Anyhow, that's a real concern and it's just totally not right.

If you owned a 100-acre farm near Lake Scugog and somebody came along and six months later you found out that 50% of it was designated as wetlands, do you feel you should be compensated for that designation or do you feel that would just be something that would be natural?

**Mr Rae:** I feel that we all have to give a little bit back to the land. I don't know if we're exactly owners of the land.

**Mr McLean:** Well, I'm saying if you owned 100 acres and they came along and zoned 50% of it wetlands, do you feel you should be compensated for that or do you feel you should have no say in that?

**Mr Moore:** I think the public should be well aware when they're making purchases where they stand on official plans. You might not have been able to do that yesterday, but maybe today you can, so you know what it's coming to. That's why I'm pointing out "major open space." If it's identified as where there are agricultural lands in the area, if they're identified as permanent agricultural, they stay there for ever; as long as our lifetime, anyway.

1650

**Mr McLean:** "The hazard associated with hazard lands can be removed through improvements and subsequently developed." Do you feel strongly that that can happen?

**Mr Rae:** It's happened.

**Mr Moore:** It's been done. Whitby has it written specifically right into one of its areas. They call it a low-hazard land. How they can differentiate, I don't know. They're saying they want it to be developed.

**Mr McLean:** "Protection of lands that are categorized as having environmental significance can only be protected through...." You didn't finish that sentence. You said you'd maybe get back to it. Have you thought yet of what the rest of that sentence may be—"through zoning" or "through some process in planning"?

**Mr Moore:** I think one of the things, as Glen said in the beginning defining what a wetland function is—and the adjacent lands, in our view, are certainly to some extent a part of the wetland function. There's water charging of the marsh and if they remove that by controlling stone water runoff, we know how that's treated. It goes into one point in the stream; it doesn't feed all of the stream, so all the boundaries are—

**Mr McLean:** I liked your suggestion with regard to the appointment of—whether it's a councillor, or who it is from the public, that they should have some background in whatever they're being appointed to. I think that's important. We used to do that 20-some years ago when I was the head of a municipality.

**Mr Gary Wilson:** And look what happened.



**Mr McLean:** Yes, it's one of the better municipalities in the county of Simcoe today, sir.

**Mr Wiseman:** Lagoon City in the middle of a marsh.

**Mr McLean:** Obviously you have no idea where the municipality was that I represented, so you shouldn't be making remarks if you're not too sure.

**The Chair:** All right, all right.

**Mr McLean:** The fact is that I think it's a good point and it's well taken with regard to appointing people who are qualified to be—

*Interjection.*

**Mr McLean:** Thank you for your presentation.

**Mr Drummond White:** Thank you very much, gentlemen. I'm very pleased to see you coming forth today. Of course, you know the issues that you're speaking of are issues that are very dear to my heart and Mr Wiseman's as well with the wetlands policy.

The issue of the wetlands policy and whether it applies or not, my understanding is that you're concerned about lands that are adjacent to the marsh and that form a nesting area for many of the birds and the natural habitat area that's important for the preservation of the wildlife in the marsh. Is that fairly accurate?

**Mr Rae:** Yes. The Ministry of Natural Resources, Ducks Unlimited, anglers and hunters—it's not stated in the wetland policy statement—have all stated that the adjacent lands are part of the wetland function. For example, frogs don't spend their entire life in water and with some birds it's the same thing. Hawks and owls that depend on food bait, snakes or frogs—that is also considered a wetland function.

**Mr Drummond White:** So even while the present plan for that area may preserve the marsh per se, it'll be a narrow sense of preservation because the marsh may be there but much of the wildlife may not be able to sustain itself.

**Mr Rae:** Yes. There's no habitat there. With the present development, the way it's proposed for Lynde shores, I've seen turtles nesting in the wood chips. That's going to be habitat loss for them and what they've planted there is a thorny barrier that's only 15 metres wide. In time, when that develops, it'll be so thick that it'll be only suitable for small mammals. So they're limiting the species for that area.

**Mr Drummond White:** The issue of an environmental advisory board has come up before, a group that would be able to inform the municipality or the region in regard to the environmental impact of proposed development. Have you any thoughts about how that would be formed, because I know there was something planned along those lines in Whitby?

**Mr Rae:** They are forming a group, but they haven't addressed any of the concerns of bylaws to be put in place if there are problems down there.

**Mr Drummond White:** How would you like to see that group formed, though, to be effective?

**Mr Rae:** I think you have to look first at the issues of the land, to have something to monitor, and then also look at cats and dogs, the intrusion of people, pollution

and noise. I think they have to deal with all those issues before they even think about a committee.

**Mr Drummond White:** Thank you very much.

**Mr Moore:** Drummond, I'm not sure if you're aware that—

**The Chair:** If you don't mind, Mr Wiseman has a question or two.

**Mr Drummond White:** Mr Moore was still trying to respond.

**Mr Moore:** I lost my train of thought.

**The Chair:** Perhaps we can come back to it. Mr Wiseman will ask a question or two, and once you think of it, we can come back to that question.

**Mr Wiseman:** I'd like to turn your mind to the recently done Durham region official plan, and ask: Did you participate in the public hearings on the Durham region official plan?

**Mr Moore:** No.

**Mr Wiseman:** Thanks. Now you can answer.

**Mr Moore:** Can I put another question forward, or a comment?

**The Chair:** Sure.

**Mr Moore:** Some of you are probably aware that the region has been delegated the minister's authority to approve plans as of September 1 of this year, and that's very concerning to us because Whitby's official plan is just in its final phases and they're going to push this through. Is it going to even be close to what the bill is going to ask for? Yet the minister chose to give this delegation to the region.

**Mr Drummond White:** I think it would be an appropriate question. Would the region's overseeing of the Whitby official plan be in line with Bill 163 if it's done in the next several months, prior to the passage of the bill?

**Mr McKinstry:** Bill 163 won't come into effect, likely, until possibly January 1995, so therefore it would be consistent with—and the policy statements would not come into effect either. However, I would make the comment that many of the policies in the comprehensive policy statements already exist in some form as government policy, so many of those policies would already be required to be implemented in any official plan approval in the next few months.

**The Chair:** Okay?

**Mr Wiseman:** It would also have to conform to the Durham region official plan.

**Mr Moore:** Yes. My feeling right now is that as much as I dislike some of what I see missing out of Whitby's plan, it's probably better written than the region's, and yet they only have to meet the region's plan.

PAUL WALSH

**The Chair:** I'd like to ask Inclusive Neighbourhood Campaign, Fiona Stewart, if she's here, to come forward. If not, we'll move on to the next deputant, Mr Paul Walsh.

Mr Walsh, please begin any time you're ready.

**Mr Paul Walsh:** I just want to thank the committee for allowing me the opportunity to come and present my views. I do not represent my employer, which is the county of Hastings. You will be hearing from them on Friday in Napanee. I'm not able to attend that day so I made the opportunity for today.

Among my peers, the general consensus is that the Sewell commission did a very fine job. What he was selling, we generally bought, principally that, "The province was getting out of the approvals business," and "County reform is not a term of reference for this commission."

I'm happy to answer any questions the committee might have, other than my two main points, and in fact I'd encourage you to do so, but I'll stick to those two points. Those would be the role of approvals, section 10 and section 28 of Bill 163 and, secondly, county reform in the form of municipal planning authorities, section 8.

The role of the approval authority in the province under the new act presents some problems such as the following:

The time taken to approve or deny approval of a plan of subdivision or an official plan is far too excessive, and I think that's been more or less granted on face value. When the ministry had their official plan hit team in to clear up the backlog of some of the approvals, they were very effective and it was very refreshing to see. However, when many of the contract staff are now gone, it seems that the old patterns are resuming somewhat. This is discouraging.

1700

A second problem might be described as the apparent inconsistent patchwork of delegated approval authority throughout the province. Some counties have received authority while others who have equally competent staff and an upper-tier official plan in place have not. Bill 163 proposes to delegate approvals to regions, not all of which have official plans. This is confusing. This isn't consistency. It lacks or takes away from the clarity of role.

This is a third problem that might be cited: Counties have been criticized as being too geographically diverse, too large or too removed from the voter to provide meaningful planning services such as approvals. This has some truth.

Solutions:

Make a consistent and principled decision to delegate approvals of plans of subdivision and local plans to counties. This may come with different conditions, depending on the state of planning in a given county, but this is a problem of implementation; it is not a problem of principle. The principle must first be established in law, and it should be.

Secondly, the provincial role, once a bundle of toothy policies are in place, should be—and this is what people like me need—a technical adviser, a researcher and innovator, and a sponsor of skills development and training for municipal staff. I think the resources demanded to perform this role that is needed by municipalities would necessitate getting out of the approvals

business. I would also suggest that once a comprehensive set of policies are in place, it would be redundant for the province to remain in an approvals role since the remaining task at hand is shaping local circumstances to the policies that have been issued. Something like this can only be done locally.

The third solution offered: Once counties have the authority to approve local official plans, whatever flexibility is needed to address geographical diversity etc will be established. Many services, such as assessment, school boards, social services, health units, among others, all operate on a county or multicounty or a greater county basis. In fact, recent fact-finder reports to the Minister of Education call for administrative and other functions for school boards to occur at a multi-school-board level in the form of consortiums. It would appear to me that other ministries are reinforcing the idea of a county role, not undermining it with the introduction of new rigidly incorporated creatures at a part-county or lower-than-county scale called municipal planning authorities.

Recommendations:

(1) Section 10 of Bill 163 should be amended to establish counties the authority to approve local official plans. We need that flexibility to incorporate variation in local values, particularly in Hastings county which is very north-south in orientation geographically, and we have a mix of urban and rural type communities.

(2) Section 28 of bill 163 should be amended to establish counties the authority to approve plans of subdivision.

(3) Section 10 and section 28 of Bill 163 should be amended to permit the minister to attach conditions for the delegation of authority of approvals to counties. This would give the province the flexibility it needs.

Municipal planning authorities is the second main item I wish to address. I'll refer to them as MPAs.

Problems:

(1) Municipal planning authorities would effectively unilaterally initiate reform of counties without a comprehensive review of implications and alternatives.

(2) Criteria outlined by the final report of the Sewell commission with respect to municipal planning authorities have largely been ignored. There are no real conditions except the minister's approval of the local municipality bylaw to initiate municipal planning authority.

(3) The vehicle of an MPA could be used by frustrated municipalities in dealing with county reform for purposes other than good planning, and I'll expand on that later.

(4) John Sewell publicly stated on several occasions that county reform was not a term of reference, yet permitting MPAs in the present form of Bill 163 is tantamount to this. I think this seriously undermines the due public process that was taken by the commission.

(5) The very idea of an MPA would tend to isolate the local ratepayer and remove the accountability of planning matters from an elected council. It's an old style of governance that to my experience the public has been showing a great deal of philosophical animosity. By way of description, it's not the policy; we've heard about wetlands. To my experience, people want to protect



wetlands. They understand that; it's the who and the how that is really bothering them.

(6) MPAs would not be able to effectively address broad planning issues since they would likely be formed with a limited geographical scope. Consider, for example, the recent report in the *Toronto Star* that commuting distances now average 48 minutes and the implication that would have on growth and settlement policies. Clearly, to address broad planning issues you need a broad geographical scope. Municipal planning authorities, by the nature of this legislation, would not establish that.

(7) Section 8 of Bill 163 is openly discriminatory towards counties and, as such, does not exemplify any basic underlying principle of good governance. The appearance is that an agenda has been written that needs the legal substance to be implemented. This point becomes pronounced when considering that the commission's final report dealt with the idea of an MPA in seven paragraphs, in contrast to the substantive proportion that Bill 163 deals with MPAs. This seriously undermines the good work by the commission.

(8) The motives of those advocating MPAs, at least as I have learned by way of discussion at the local level, is, after formation, the members intend to delegate the approvals downward. So it will be business as usual with a veil called a municipal planning authority. This would be the antithesis of Sewell's emphasis on broad-based planning. You wouldn't have it.

(9) The public does not want a new form of arm's-length government. What is needed is simplification of service delivery by means of integrating as many disciplines and issues as possible at the county level, or in the case of regions, a broad level. An MPA would effectively isolate itself from having such flexibility by its incorporated arm's-length status.

#### Recommendations:

(1) Delete section 8 of Bill 163. It appears to be poorly thought out and attempts to deal with county reform when it is not an issue. Granted, county reform should occur—I don't think anybody would disagree with that, really—but only on a comprehensive basis, not on a hodgepodge basis. Dealing with but one service—planning—would only serve to remove an issue that would otherwise motivate counties to reform.

(2) Priority and emphasis should be made to enhancing joint planning rather than establishing MPAs. Consideration should be given to the idea of consortiums among counties, something that appears to be intended to be used by school boards and hospitals in the future, if not already being used. We need a broader scope, not a smaller one, that would be established by an MPA.

(3) Permit the minister to order special studies for local areas that would determine the terms of reference for the development of a number of official plans. This would set the broad basis from which a number of official plans could be developed and direct development thereafter. For example, in Hastings county there was an appeal by the city of Belleville to Sidney township's secondary plan. The ministry came in with a greater Quinte growth area study. It didn't have much substance before the

Ontario Municipal Board because it was just a study and it had enough flaws in it that it tended to contain some discredibility, although generally it was all right. But I think there should be some status given to that and I think it would be a very good mechanism for doing what the province wants to do.

(4) If MPAs are to be retained in Bill 163, ensure that they are going to be established for purposes of good planning. Therefore, permit them to be established only in areas where upper-tier planning is not presently occurring and only permitted by the affected county by virtue of county bylaw. These were two of several criteria recommended by the Sewell commission.

1710

I don't know about you, but I only have page 6, and I know there's page 7. Do you have page 6 only?

**Interjection:** Yes.

**Mr Walsh:** Okay, oh well. I do have a bit of an addendum here that's not on the report. It's just basically more or less a case scenario. We'd like to send home a few of those points that have been previously mentioned.

Hastings county is composed of 27 municipalities: eight are urban and 19 are rural. It stretches from the Bay of Quinte, which is a finger of Lake Ontario, up to Algonquin Park.

**Mr McLean:** Over 100 miles.

**Mr Walsh:** Yes, and two thirds of the north is pre-Cambrian, one third is—of the south, of the remaining—St Lawrence lowlands where most of the agriculture occurs, although the north has its fair share of farms on the sandy knolls etc.

There has been upper-tier planning in place since 1974. It is applied to the whole of the county with the exception of Sidney township, which has a standalone plan. They started their official plan because of some of the problems that they had there, and more or less still do, but didn't finish until some time later. As a result, consent authority remained vested with the county. They had it, but then they lost it. That's a bit of the history of planning and the nature of the geography in Hastings county.

At the south limit of Hastings county you have the city of Belleville and the city of Trenton: Belleville around 40,000 and Trenton around 17,000. Sidney township is 17,000. It makes up maybe about a quarter of the population of the county and about less than a third of the assessment.

So you can see why perhaps some municipalities such as Sidney township would not like to be made up of a broader planning structure called county when they have, for all intents and purposes, great underrepresentation. Representation by population, for all intents and purposes, does not exist in Hastings county. This is a problem, but it's not a planning problem.

Sidney township has a recently approved secondary plan that will phase in and allocate growth beyond 20 years. Hard services are being supplied by the construction of a new water treatment plant and by servicing agreements with abutting municipalities. Official plans of secondary plan that will address broad planning issues

beyond a normal time frame, ie, 20 years, have either been recently approved or are in process.

In short, broad planning issues in my area have already been addressed. Yet at the same time, Sidney township, for an example, is a strong advocate of municipal planning authorities. Clearly then, since there are no more broad planning issues over at least the next 20-plus years, their advocacy of such a structure is for non-planning matters. It's really to address in an incremental and piecemeal fashion the problem of county reform towards representation by population.

I can empathize. I do not blame Sidney township for its frustration in being part of Hastings county, but the solution is not a municipal planning authority. This would only serve to further the fragmentation of the delivery of services at local level. The problem is county reform and this issue must be given more respect and more consideration than simply dealing with one service called "planning." Once municipal planning authority is established, it will bring with it a great deal of inertia and preclude the optimal solution for county reform.

I beg this committee to assert its authority, its responsibility and leadership and strike section 8 from Bill 163. That concludes my presentation. I'd like some questions.

**The Chair:** Unfortunately, there's no time for questions, but if somebody wants to make a brief, 30-second statement, that would be all right. Do you want to do that?

**Mr Eddy:** I would agree with you completely on the MPAs. Every county that's come forward says, "We don't want it." I don't remember one deputant saying: "It's good. We want it." I agree with you. Good point.

**Mr McLean:** I appreciate your brief. I have one short comment I wanted to make with regard to giving the approval of local official plans. Do you think that will ever happen, that there will be approval for local official plans? I know there will be approval for counties to be able to delegate the subdivisions and the approvals for that.

**Mr Walsh:** I don't see any reason why not. We're already doing zoning bylaws. In the past, official plans have been glorified zoning bylaws, with a number of designations put in place. Secondly, we really can't control the vision of a municipality and its intent by virtue of a zoning bylaw; it has to be done by way of policies by the local council.

As it's such an important tool and it's such a local matter, I think it's imperative that county be given the authority to grant local official plans, perhaps even local official plans that may apply to more than one municipality. Then that municipality would be able to have representation by population on a planning advisory committee that would be dealing with the local official plan.

In Hastings county, for example, I'd only want to see two: one in the north and one in the south; one in the north to deal with shoreline development. That's a big concern. They're very progressive thinkers in the northern

part of Hastings, despite what some may think. Some of the values are very much converging. There used to be a diversity of values, but they are now converging.

**The Chair:** Mr Wilson, please a statement, not a question.

**Mr Gary Wilson:** Thank you very much for your presentation, Mr Walsh. It certainly gives the committee a very appealing foretaste of what we can expect in North Fredericksburgh, actually, when we go into the area farther east. It's regrettable we don't have the time to go into the two issues that you so clearly and thoroughly outline. Certainly, it highlights an issue, not only in our area; that is, how you balance the county interests with the municipal interests, which can often appear divergent, at least. It's something I'm sure we'll hear again and we'll look to see that the legislation, with ideas like yours, will be as strong as possible in this area. So thanks again for coming.

**The Chair:** Thank you for coming and for your brief.

**Mr Peter White:** Mr Chairman, I wonder if I could offer a clarification on a remark that was made earlier.

**The Chair:** Please identify yourself.

**Mr Peter White:** My name is Peter White. I'm a senior planner with the Ministry of Natural Resources. Mr Eddy raised a question related to why the minister hadn't circulated a certain document. I've sought clarification on that for the committee, and if I may, if you refer to the letter submitted by Miss White, in her letter she says, "Our participation in this process is the result of a request made by the Honourable Howard Hampton, Minister of Natural Resources, to submit the...report to the various...legislative initiatives," that were occurring. One of those is this committee, the other one is Bill 171, and a third one was the Crown Forest Sustainability Act.

The minister wasn't able to deal with the entire report within the time frame to meet all of those committee requirements, so he asked Miss White and members of that ad hoc committee to ensure that you, your committee in particular, but the other committees as well, had the benefit of that report for their consideration without it coming through him in a very, if you will, formal sense. Also, since they wrote it, they could answer the questions better than the minister could. So that was what the minister had intended. We hope that's acceptable.

**Mr Eddy:** My only point was that if I'd had it some time sooner, I'm sure—you can't get into it, but I'd have got through some of it, not all of it, and been able to ask questions. But we still can.

**Mr Peter White:** Yes, and the minister and members of the ad hoc committee are available to discuss that report. But the minister didn't feel that he could be prepared to discuss it with you, so that's why he left it with that committee.

**The Chair:** Thank you. This committee's adjourned until 9:30 tomorrow morning in Peterborough.

*The committee adjourned at 1719.*











## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

**\*Acting Chair / Président suppléant:** Wilson, Gary, (Kingston and The Islands/Kingston et Les Îles ND)

Bisson, Gilles (Cochrane South/-Sud ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

**\*Curling, Alvin** (Scarborough North/-Nord L)

Haeck, Christel (St Catharines-Brock ND)

Harnick, Charles (Willowdale PC)

Malkowski, Gary (York East/-Est ND)

Murphy, Tim (St George-St David L)

Tilson, David (Dufferin-Peel PC)

**\*Winninger, David** (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Eddy, Ron (Brant-Haldimand L) for Mr Murphy

Grandmaître, Bernard (Ottawa East/-Est L) for Mr Chiarelli

Hayes, Pat (Essex-Kent ND) for Mr Malkowski

McLean, Allan K. (Simcoe East/-Est PC) for Mr Tilson

Mills, Gordon (Durham East/-Est ND) for Ms Haeck

Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC) for Mr Harnick

White, Drummond (Durham Centre ND) for Mr Bisson

Wiseman, Jim (Durham West/-Ouest ND) for Ms Harrington

### **Also taking part / Autres participants et participantes:**

Edwards, Tom, mayor of Whitby

Ministry of Municipal Affairs:

Hayes, Pat, parliamentary assistant to minister

McKinstry, Philip, acting director, municipal planning policy branch

Pilkey, Hon Allan, minister without portfolio

White, Peter, senior planner, Ministry of Natural Resources

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Stobo, Carolyn, research officer, Legislative Research Service



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**Legislative Assembly  
of Ontario**

Third Session, 35th Parliament

**Assemblée législative  
de l'Ontario**

Troisième session, 35<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Thursday 8 September 1994

**Journal  
des débats  
(Hansard)**

Jeudi 8 septembre 1994

**Standing committee on  
administration of justice**

Planning and Municipal Statute Law  
Amendment Act, 1994

**Comité permanent de  
l'administration de la justice**

Loi de 1994 modifiant des lois  
en ce qui concerne l'aménagement  
du territoire et des municipalités

Chair: Rosario Marchese  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Thursday 8 September 1994

Jeudi 8 septembre 1994

*The committee met at 0934 in the Ramada Inn, Peterborough.*

PLANNING AND MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT DES LOIS  
EN CE QUI CONCERNE L'AMÉNAGEMENT  
DU TERRITOIRE ET DES MUNICIPALITÉS

Consideration of Bill 163, An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes related to planning and municipal matters / Projet de loi 163, Loi révisant la Loi sur la planification et l'aménagement du territoire de l'Ontario, la Loi sur les conflits d'intérêts municipaux, et modifiant la Loi sur l'aménagement du territoire et la Loi sur les municipalités et modifiant d'autres lois touchant des questions relatives à l'aménagement et aux municipalités.

PETERBOROUGH AND DISTRICT  
HOME BUILDERS ASSOCIATION

**The Chair (Mr Rosario Marchese):** We're quite ready to begin, happy to be here in Peterborough. We invite our first guests, Mr Murray Davenport and Mr Hans Keppler. Welcome to this committee. You have half an hour for your presentation. Please leave as much time as you can for the members to ask you questions.

**Mr Murray Davenport:** My presentation here is on behalf of the Peterborough and District Home Builders Association. I am currently president, and Hans Keppler is a director of the local association.

Your committee has received a presentation in the past from the Ontario Home Builders' Association which we have reviewed, and we are here to express support for their positions. However, we are also prepared to speak to the issue on our own behalf with some points we would like clarified in addition to the presentation by the Ontario Home Builders' Association.

The Peterborough and District Home Builders Association represents more than 80 small businesses which are involved in the development and construction of new houses in the Peterborough district. Our industry has been ravaged by the recent recession in the 1990s and by the increased cost of constructing houses created by changes in the Ontario Building Code and provincial legislation created by our provincial government.

We have concerns with Bill 163 as presented to the Legislative Assembly of Ontario. As I mentioned, we have reviewed the concerns expressed by the Ontario Home Builders' Association in their brief dated August

25 and we do support their recommendations. We have prepared this brief in an effort to expand on some of our local concerns as they relate to Bill 163.

The Peterborough region is a rural community with issues and concerns largely separate from those issues and concerns encountered in the Toronto region. We have concluded that the legislation presented to the House is often based on issues peculiar to the Toronto region, which do not necessarily apply to the rural regions of Ontario.

The size and nature of land development projects in Peterborough are relatively small with the number of lots commonly being created ranging from 25 to 100 lots per application. Obviously the planning costs related to a small plan of subdivision are high relative to the number of lots being created as all developments must follow a similar process whether that development is large or small. That compares with housing developments in Toronto of 500 to 1,000 homes or greater.

Mr David Cooke, as the Minister of Housing, created the position of provincial facilitator to address the real concerns of the development industry in the province as they existed in the late 1980s. The theme of the day was to streamline the planning process so developments could be brought on stream with a minimum of delay so affordable housing could be provided by the free market home building industry. This experiment has worked relatively well in addressing the processing issues of the day, with the exception of procedural issues created by the Ministry of Environment and Energy, and to my knowledge most of those problems haven't been resolved to this day. This act serves to reverse the trends created by the provincial facilitator's office.

Subsection 51(14) of the act states, "At least 30 days before a decision is made by an approval authority under subsection (20), the approval authority shall ensure that," among other things "a public meeting is held."

We interpret that to mean that before conditions of draft plan approval are issued by the approval authority, and in Peterborough that's the city of Peterborough, they must have a public meeting within 30 days of the issuance of conditions of draft plan approval.

The city of Peterborough is currently reviewing a 39-lot plan of subdivision, and it held a public meeting on August 29, 1994, to receive the comments of the affected community. The normal process in the city of Peterborough dictates that city council will have the opportunity to make its first official decision on this application on September 12, 1994—that's next Mon-



day—which is 14 days after the public meeting. Conditions of draft plan approval then have to be prepared and issued within 16 days after September 12 the way Bill 163 is written, as I understand it.

0940

Should council decide that the issues related to this development project are too involved to permit decision at that time, and with the city of Peterborough that's not unusual, then the next time city council would review the issue, based on the normal cycle of council meetings in Peterborough, would be October 3, 1994. Subsection (14) would require that a new public meeting be held, complete with proper notice procedures being implemented, before conditions of draft plan approval can finally be issued.

The implications of this subsection are extensive and a knowledgeable objector to a development proposal will have immense power under the legislation to oppose the processing of this development application. We believe this subsection is unnecessary and too restrictive on the developer. I think at the local level one public meeting is sufficient for our subdivision development applications. There's really no need to keep following up with a cycle of public meetings.

The ability to make minor changes to the approved plan by redline amendment has been removed from the Planning Act. This change restricts the approving authority and the developer from making changes that make sense. Usually the reason for using the redline amendment rule was not obvious during the application review process, so this flexibility in the act has been important in the past in resolving minor issues encountered when finalizing a subdivision plan just prior to registration.

We recommend that redline amendments of draft plans of subdivision be permitted under the Planning Act.

Subsection 51(33): "The approval authority may, in its discretion, withdraw the approval of a draft plan of subdivision or change the conditions of such approval at any time before the approval of the final plan of subdivision under subsection (47)."

This subsection dramatically increases the risk of proposing new plans of subdivisions by private developers. Considerable expense is incurred by the developer in obtaining draft approval of a plan of subdivision in its first instance, and all of that investment can be lost by a sudden change in personnel or policy of the approval authority. Just imagine the impact that a change of municipal council can have on the development process with this clause in force and effect.

The approval authority should not have the ability to withdraw the approval of a draft plan of subdivision, in our opinion.

These are our comments, in addition to the comments that have already been presented to you by the Ontario Home Builders' Association. We'll address any questions that you might have.

**Mr Bernard Grandmaitre (Ottawa East):** I think my question will be directed to the parliamentary assistant on the redline amendment. I think it should be clarified that redlining or minor changes to the plan or

plans can be made. They will be allowed, right? Am I right?

**Mr Pat Hayes (Essex-Kent):** I will refer that to staff, if you don't mind, Mr Grandmaitre.

**Ms Diana Dewar:** I'm Diana Dewar from the Ministry of Municipal Affairs. There is no change in Bill 163 that would prevent any changes to be made to the draft approval. The change in Bill 163 would require, though, that where there's a change in conditions, notice would be required.

**Mr Davenport:** With the echo in here, it's difficult to hear what you're saying.

**Ms Dewar:** Sorry. Bill 163 does not prevent changes being made to the draft approval, but the change would be that notice would have to be given where there's a change made to the draft approval.

**Mr Davenport:** Yes. It's quite extensive. It's about the same as the notice for an additional application for a plan of subdivision.

**Ms Dewar:** Yes.

**Mr Hans Keppler:** But that's the problem. We have to start from scratch again, and that is what we're trying to prevent, because redline changes are minor little changes which are usually agreed by planning staff anyway. So it's not something that the developer wants to put over on the municipality or prevent in the act. It's something which is agreed mutually. It's a convenience.

**Mr Davenport:** We agree with your comment. The issue is that the circulation of the changes that are allowed under the new act are so extensive it's about the same as a review at the initial instance of the application for plan of subdivision. If the intent of the government is to streamline the development process, then this is the one good way of stopping that from happening.

**Mr Hayes:** This particular issue has been raised by many presenters, and I think that is something that the committee may have to take a good look at. I can't make any commitments at this time, but it is something that I know has been brought up several times.

**Mr Alvin Curling (Scarborough North):** Thank you for your presentation. As we go around the province and listen to some of the developers, some who are not the large developers, so to speak, but those who are in the medium, 35, 50, creation of homes and all that, they seem to have more frustration in the process than any other, and normally legislation seems to target the big ones and the small ones get more broadsided on this itself.

One of the things we've asked the government to define, I know that one of things that held you up in your development is the fact of minor variances. Do you have an idea of what a minor variance is as defined, or if it is not defined or if it should be defined, in this new legislation? Do you have an idea of what minor variances would be as defined in the legislation as you have read it?

**Mr Davenport:** I'm not real clear, quite frankly, on minor variance as it relates to this act. Are you thinking of the current process?

**Mr Curling:** Yes. Do you feel then that it should be very clear what a minor variance is in the legislation? Maybe I should ask the parliamentary assistant to define for us what a minor variance is as it's reflected in here.

**Mr Hayes:** I would certainly like to. I think Mr Curling was at the meeting the other day when we had the individual from the Ontario committees of adjustment association. I know that question was raised there, and that individual even said, when some members thought that the government should give the definition, that it's certainly very hard for anybody to do. I think, you know, it takes probably some common sense more than anything in dealing with minor variances.

**Mr Davenport:** That's the system that minor variances are working under at the present time, and it's effective as far as we're concerned. I'm sure that the planning staff for the local municipalities have to define on a daily basis the limits of what a minor variance really is and what's a planning policy.

**Mr Curling:** Then, as the parliamentary assistant has stated, they have no idea of what a minor variance is. It could be large, it could be small, but it's minor in itself. What it is though—I'm talking about developers—you have identified the fact that a minor variance can be something that is very costly to developers like yourself, because it takes time in which to know what is being amended and what is being addressed.

**Mr Davenport:** In Peterborough minor variances, as they are currently implemented, take about two months to go through the process. Minor variances in relation to a house builder will come up primarily because of an error in the layout of the house, so you implement the minor variance process and in the period of time it takes to build the house, then everything's approved and there's not a problem. It might be a bigger issue in other communities, but I don't think it is in Peterborough.

**Mr Curling:** It's not there. Thank you very much.

**Mr Allan K. McLean (Simcoe East):** Does Peterborough have the subdivision approval authority?

**Mr Davenport:** Yes.

**Mr McLean:** Is it working?

**Mr Davenport:** Well, since the approval authority was given to the city of Peterborough, I would think that we have only gone through one plan of subdivision under that system. There are not a lot of subdivisions being approved over the last two or three years. Is it working? I would say, yes, we're hoping that it will work.

0950

**Mr McLean:** Do you think this legislation is going to change anything in that, Bill 163? I guess the bottom line is, in your opinion is this bill going to speed up the planning process or is it going to slow it down?

**Mr Davenport:** Well, our interpretation at this moment in time is that it's going to slow it down, and that is the position of the Ontario Home Builders' Association as well who have done a more in-depth study of Bill 163 than we have.

**Mr McLean:** We had some planners and consultants make presentations to us in Midhurst on Monday and

they were of the very same opinion. I don't know what we're going to do about that because we have not seen any amendments that the government may be bringing in, we have not seen any regulations to implement the bill. After these hearings are all over we'll probably have 50 amendments and people will want to have some say on them and there will be no opportunity for public hearings on that.

The other question that I have is about the surrounding area around Peterborough. Does it have an upper level of—

**Mr Davenport:** An upper-tier government?

**Mr McLean:** —an upper-tier government that has planning approval, official planning?

**Mr Davenport:** No, we're fortunate to not have regional government in Peterborough. We have county government and city government.

**Mr McLean:** Does the county government have any planning approval or does it have an official plan?

**Mr Davenport:** No. They've applied for planning approval but they haven't received that as yet.

**Mr David Winniger (London South):** This came up indirectly earlier, but the point you raise on page 2 of your brief under section 3, regarding the necessity of city council having two public meetings in rapid succession if they're unable to come to a conclusion at the first of their regular council meetings, I just wondered if the ministry or the parliamentary assistant has any response to that issue that's raised there. Would it in fact be necessary to have two public meetings if they were unable to reach a determination at the first of the regular council meetings?

**Ms Pat Boeckner:** No, we don't think that's the way it can be done. The legislation requires 30 days' notice before the public meeting is held so that the public have a chance to prepare and come to the meeting. Bill 163 would require 30 days' notice of a plan of subdivision. Let me just refer to the section for a minute. It's subsection (14), 30 days before a decision is made by council.

**Mr Davenport:** What page is that on?

**Ms Boeckner:** Page 39.

**Mr Davenport:** That's a subsection of section 51.

**Ms Boeckner:** That's right. So 30 days before a decision is made the council must give notice and hold a public hearing if it's required. You'll notice that (14)(b) says "a public meeting is held, if required by regulation."

**Mr Davenport:** So how do you get around that with Bill 163? It's required.

**Ms Boeckner:** Dale Martin's task force on implementation is consulting with UDI and the home builders and so on, for instance, in what circumstances would a public meeting be held. Examples given, for instance, are if there's a public meeting being held on a zoning bylaw application or an official plan amendment, perhaps the two public meetings could be combined, or something like that. But that regulation is being consulted on with groups like your own and planners and other stakeholders to create that regulation.

**Mr Davenport:** So that is under review and possible change then?



**Ms Boeckner:** That's right. I would suggest that if you have ideas on that, you feed them through the implementation task force.

**Mr Jim Wiseman (Durham West):** Could I have a definition of what a public meeting is? Is it possible that if the developer has brought forward a request for a change in a subdivision plan, that usually has to go to council and that's usually done in an open council meeting. Would that suffice as a public meeting if it was advertised early enough, or would you have to hold a separate meeting in a separate venue with separate advertising and at the expense of the developers?

If it can be done in the regular process of council's committee of the whole or at the regular council meeting, then public meetings—it seems to me that we're having an awful lot of public meetings around my part of the world.

**Ms Boeckner:** I'm sorry, I didn't give my name before. My name is Pat Boeckner and I'm with the Ministry of Municipal Affairs in the operations division.

In that case where council has given a draft approval and they're going to change something about the approval, the conditions or otherwise, they're not required to hold another public meeting but they are required to give notice to the public—actually, in the bill there's a long list of people that have to be notified of a change—and appeal rights would kick in at that point. Council may choose to hold a public meeting.

In my experience, when there are major changes made to a draft plan, council may have to change the zoning bylaw, will probably have to change the zoning at any rate, so they would go through a public meeting, but minor changes may not require that and then you have to rely on getting notice.

**Mr Davenport:** As planning consultants, we do work on both sides of the fence and we do have the opportunity on occasion to advise clients on how to delay the process to the point of frustrating a developer to the point where he'd just give up on the project. Under the current Planning Act it is very easy to extend the process for three or four or five years without a whole lot of difficulty. If we have to keep going back and doing new public meetings to inform the public of changes to the plan that have happened, which is normal in the development process, then the system of being able to frustrate developers is going to be much easier to do for planning consultants like ourselves or others.

**Mr Wiseman:** In the course of subdivision approval through the site plan approval process this is where the minor variances would take place, but if you're going to move a road from one part of a subdivision to another part of a subdivision, then that would be a major amendment which would require the public process. But the other minor variance types of things where you would just, say, move a road over half a foot or something, this isn't something that would normally be required to go to a public meeting.

**Mr Davenport:** That's where we have a difference, or feel that this legislation is initiated in Toronto and not in Peterborough. The chance of us changing the location

of a road as it enters a plan of subdivision when you're dealing with only 25 or 30 lots is really quite small. I understand that in the 1,000 to 1,500 lot subdivisions it's not uncommon to make a major change of the total road layout inside the boundary of the plan, but in Peterborough it's very seldom that kind of major change to the plan even happens.

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**Mr Hayes:** Mr Chair, I'd like to clarify something, please, if you don't mind. On your concern number 5 on subsection (33), that's the same in the new bill as it is in the old act. It hasn't changed, and it's a section that is very seldom ever used. You're concerned about delaying the process. That's why we put in time frames to go by, time limits for responding. Those are a couple of issues.

The other part, regarding minor variances: I said earlier, and no one seems to be able to have a clear-cut definition, sometimes these things are based on their own merit. But the fact of the matter is, even today, when you talk about minor variances, they certainly have to conform to the official plan. In other words, they're governed by the official plan.

I find it actually kind of interesting. People are saying, "How do you interpret or describe or give the definition of a minor variance?" and some of the same people have been dealing with minor variances for years. We're not going to be changing what a minor variance is.

**Mr Grandmaitre:** But the difference is we can appeal minor variances.

**The Chair:** We'll have an opportunity as we go along for people to raise their points as well. We thank you for your brief.

#### COUNTY OF VICTORIA

**The Chair:** We invite the county of Victoria, Mr Robert Griffiths and Warden Ken Logan. Welcome to this committee. You obviously have noticed that unless we speak clearly and loudly, we won't be heard, so keep that in mind. If you want the members to ask you as many questions as you like, remember to keep your brief as brief as possible.

**Mr Ken Logan:** Thank you for the opportunity to speak with you today with respect to Bill 163 as it relates to the Planning Act. I'm Ken Logan, warden of the county of Victoria, and with me is Rob Griffiths, the planning director for the county of Victoria.

Before going into the details of our presentation, I would like to provide a description of Victoria county to assist the committee members. The county of Victoria abuts Durham region and is one of the fastest-growing counties in the province of Ontario; and I would say that as counties, not as regions.

Victoria county has a permanent population of 63,000. It consists of 18 local municipalities with one town, five villages and 12 townships. It is situated in the heart of the Kawartha Lakes system with the Trent-Severn waterway providing a recreational corridor through the county. With the seasonal population of campers, cottagers and tourists, the summer population within the county doubles. In addition to the lakes and rivers, the county supports a strong agricultural community as well

as being a major source for aggregate from the Oak Ridges moraine in the south to the Carden Plain in the north.

The planning department was established in the county of Victoria in 1974. In 1978 the county adopted its first official plan that covers the entire county. There are three local official plans in effect within the county. These cover the town of Lindsay, the township of Ops and the village of Fenelon Falls. These three municipalities represent about 35% of the county's total population and tax base. Lindsay has its own planning staff, while the township of Ops and the village of Fenelon Falls use consultants. The remaining 15 municipalities in the county utilize the services of the county planning department.

The planning department at the county has prepared comprehensive zoning bylaws for 15 municipalities. On a day-to-day basis they provide planning advice on development proposals, minor variances etc. The county planning department, as well as administering the county official plan, was delegated in January of this year responsibility for approving plans of subdivisions and condominiums.

The planning department also comments on consents, which are administered by the county land division committee. The land division committee is responsible for the granting of consents in all of the municipalities except the town of Lindsay.

With respect to our concerns, the first major concern that the county of Victoria has with Bill 163 is that the counties are not being treated in the same manner as other upper-tier municipalities. Section 10 of Bill 163, which incorporates a new section 17 in the Planning Act, gives all regions except Metro Toronto the power to approve local official plans.

As earlier stated, the county of Victoria has had an official plan since 1978 and was delegated the authority for subdivision approval earlier this year. The county has had an official plan and a planning department for as long as many of the regions and carries on many of the same functions. On this basis, the county of Victoria feels it should have the same responsibilities given to the majority of the regions within this province. This would include the ability to approve local official plans and amendments thereto.

The second major concern is the provision under section 8 of Bill 163 that incorporates section 14.1 into the Planning Act. This provision permits two or more local municipalities to establish a planning area with the minister's concurrence. If a group of local municipalities form a municipal planning area, they would then assume the responsibility for the administration of the county official plan. They would also not contribute to the county levy for planning processes.

This has two significant downfalls. The first is that it takes away the ability to plan in an overall, comprehensive manner for issues that cross municipal boundaries. An example is the county road system. If municipal planning areas are formed, the county would no longer have a role in land use planning but would still be responsible for providing a road network for present and

future generations. Land use patterns are directly related to the transportation network and cannot be carried out in isolation of each other.

The second matter is the economics of scale. If municipal planning areas no longer contribute towards the county levy, it could financially jeopardize the planning function at the county level. Planning is a multi-disciplinary matter that not only covers land use matters but also deals with the environment, transportation, agriculture and natural resources. Without a strong financial base for the planning function, the number of people with various areas of expertise within the planning department could be reduced, affecting the level of expertise and experience to deal with major planning issues.

Section 10 of Bill 163, under subsection 17(7) of the act, will require prescribed counties to prepare an official plan. Under section 40 of Bill 163, section 69.2 is being added to the Planning Act, which permits the minister to charge administration fees to a county for processing of planning applications if the county fails to adopt a plan.

It is our understanding that Victoria county will be a prescribed county because it abuts the greater Toronto area and is subject to significant growth. If Victoria county is a prescribed county and municipalities are allowed the opportunity to opt out of the county planning by forming a municipal planning authority, it significantly weakens planning at the county level. Secondly, the provision to charge an administration fee towards counties is discriminatory in that it does not apply to any other municipality.

A third area of concern to the county is subsection 6(2) of Bill 163 amending subsection 3(5) of the Planning Act, which requires planning decisions to be consistent with policy statements. This provision in the Planning Act, along with expanded and detailed policy statements, essentially means that municipalities, both upper and lower tier, will have less ability to tailor provincial policy to fit local circumstances. Provincial staff will be able to identify items that would qualify and be regulated by the provincial policy statements without any public input.

For example, within Victoria county there is a major aggregate deposit that ministry staff decided was an area of natural and scientific interest. This major aggregate resource cannot be extracted and is to be left in its natural state. It could just as easily have been shown as an area of significant aggregate. If so, the mineral aggregate policies would have applied. Either way, there was no local involvement as to whether that aggregate material should or should not be removed and whether the area should or should not remain in its natural state. It was all determined by Ministry of Natural Resources staff, in-house, with no public consultation.

This is just one area where there is potential conflict between provincial policy statements that could have a substantial impact on residents. For example, if that aggregate deposit was not identified as an ANSI but as a significant aggregate deposit, then it could have an impact on the local residents with the haulage routes, hours of operation etc.

Policy statements should be a guide in the development



of official plans. Ministry staff, in reviewing draft official plans or amendments, can have input into their development along with the public. The municipal board could be involved to resolve a matter of whether it is of provincial significance if a disagreement occurs. This process has worked in the past and was found to be acceptable from a municipal perspective.

Once an official plan is approved, then any zoning bylaw that is passed should conform to that official plan and no regard should have to be made back to the provincial policy statements, since the plan would be considered to have regard to the policy statements. This process allows for public input to meet local circumstances while having considered the policy statements.

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The policy statements and legislative requirements require substantial upfront reports, studies and background information, and result in a very costly process for small business and individuals with small development proposals. It also greatly increases the municipal costs for preparing plans and amendments. In rural Ontario these costs are significant for both taxpayers and small businesses.

Finally, the time periods that are being established are lengthy and may not streamline the approval process. For example, in the proposed subsection 17(16) of the Planning Act, council cannot adopt an amendment until 30 days after the public meeting. This requirement will delay a number of amendments up to a month or more. The majority of the amendments to official plans adopted by Victoria county have no objection from ratepayers or agencies that have provided comments.

Again, I thank you for the opportunity to make our views known to you, and we respectfully request that the committee amend Bill 163 to address our concerns.

**Mr McLean:** Thank you for your brief. That was very well put together and well documented. It raises some issues there that I hope the ministry will take into consideration and address.

The one issue I wanted to discuss with you was with regard to the road network, present and future generations. There are very few who have hit on that very subject. We were meeting yesterday around Metropolitan Toronto. None of the delegates talked about anything to do with the planning with regard to our transportation system. I see today that you have raised that, and it's a very important issue.

The other issue is with regard to the Ministry of Natural Resources putting on and designating an area of significant interest with no public consultation. If the ministries are allowed to proceed and not have any consultation with the public—I thought the official plan was to be drawn by the local people, with public hearings held and public input. Is that still on your official plan? Is there any change in that?

**Mr Robert Griffiths:** At the present time the Planning Act has "regard to" and so we must consider things of provincial significance. The proposed change in Bill 163 would be "be consistent with," I believe is the wording, and that leaves very little room, in our view, to

allow for public input, and decisions can be made by ministry staff without public input.

As another example, we have an area that is subject to flooding in part of our county. Access is considered a major concern with respect to that policy statement, access to and from those cottages. We have properties in that area that are subject to flooding that are going to be high and dry during a flood. They are going to be two or three feet above water during a regulatory flood, but the access is going to be flooded. Is that any different from an island, where you must get to it by boat? There should be the ability to look at a provincial policy statement and provide some local flavour to it to meet the local circumstances.

**Mr McLean:** The other question I have has to do with the lower tier and the opportunity to opt out of county planning. In your view, should all lower-tier municipalities have an official plan, as well as the upper tier, such as the county of Victoria has its official plan?

**Mr Logan:** I believe that, yes, they should have, but I believe it should be a supplementary to the upper-tier official plan.

**Mr McLean:** It's got to coincide with the upper tier if they want any approvals, from my understanding. Is that right?

**Mr Logan:** Absolutely.

**Mr McLean:** But you only have two municipalities, other than the town of Lindsay.

**Mr Griffiths:** Three.

**Mr McLean:** There are three?

**Mr Griffiths:** Two, plus Lindsay.

**Mr McLean:** Yes, two with Lindsay that have official plans.

**Mr Logan:** Yes.

**Mr McLean:** Are the others in the process of doing anything?

**Mr Logan:** Some are, and to the best of my knowledge there are several that are not. But I know some of them are considering it.

**Mr Noble Villeneuve (S-D-G & East Grenville):** As the warden, you're quite obviously disturbed by the Ministry of Natural Resources having no public consultation or whatever in the designation of a considerable aggregate deposit. Did you get an explanation for that? Did it just happen and you were told: "This is the way we see it, thank you very much. Your input isn't required"?

**Mr Logan:** I haven't received any explanation for it. Something may have gone through the staff. I'll refer to Robert. Did you have a staff person receive anything?

**Mr Griffiths:** It was identified in the mineral aggregate reports produced by the ministry as an area of significant deposit. I believe it's an esker. It's probably one of the two biggest eskers in the province, so it certainly is significant. There was certainly in the development of our county official plan a lot of discussion in house between ministry staff of whether that area should be extracted or whether it should remain in its natural state. There was no public involvement in that process.

The county at one point tried to acquire part of that for a gravel pit and was told that it could not be used. The county was not successful in purchasing it so did not pursue it. A major aggregate producer has purchased it and is probably keeping it for the long term. What happens at that point I don't know.

**Mr Villeneuve:** The designation of wetlands: Is this a problem in your jurisdiction at this point with land owners not realizing that they're either in the buffer area or in wetlands, very much limiting what they can do with their property?

**Mr Griffiths:** I think the biggest problem with wetlands is that they're essentially all being reclassified within our area and being redefined. Areas that were class 4 or 5 wetlands three or four years ago which were incorporated into our official plan have been reclassified and are now, for example, class 2 or something. So they've changed. I think there are probably some that have gone the other way too. But that causes some concern from the public in that it seems to be a moving target. We try to incorporate it into the official plan, but already the official plan is out of date with the reclassification.

**Mr McLean:** Who reclassified them?

**Mr Griffiths:** The ministry staff. They've come up with a new classification system and have gone back and re-evaluated them.

**Mr Ron Eddy (Brant-Haldimand):** I wonder if that was approved by the Legislature.

**Mr Villeneuve:** You don't need to wonder.

**The Chair:** Mr Eddy, five minutes.

**Mr Eddy:** Thank you for bringing forward the concerns that you have, because they are very important. You'll be interested to know that of the 26 counties in Ontario, it looks like we're going to hear from about half with presentations. They all agree with you, number one, that the counties are not being treated fairly or equally, and we're given reasons for that.

You feel that you will be a prescribed county, is that right? Have you been given any indication that you are going to be designated a prescribed county and therefore delegation of all authority—or you're hopeful you will be?

**Mr Griffiths:** It's not a matter of hope. In discussions with the Ministry of Municipal Affairs, it was my understanding that Victoria county would be one of the designated municipalities because we about the greater Toronto area, we're subject to a fair amount of growth, we have an official plan. In their view we are one of the logical ones that would be prescribed.

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**Mr Eddy:** In that case, it's unfortunate you weren't named in the bill, Victoria county, the same as the regions.

**Mr Griffiths:** We're assuming we're going to be in.

**Mr Eddy:** You assume. Well, I hope that works out. It is a matter of hope. I think I'd have to term it that way.

On the matter of municipalities in a county opting out,

all of the counties that have made presentations are very, very concerned about that. They're distressed about it, as a matter of fact. My suggestion, and we'll present an amendment to that effect, is that a municipality in a county can only opt out of a county planning program or arrangement with the permission of that county council. I think that's a must or else we're going to have some really serious problems in planning in counties across the province. Would you agree with that proposal—

**Mr Logan:** Definitely.

**Mr Eddy:** —that you would consider it and look at it and maybe counties would have criteria under which they would grant that or consider it?

You've also pointed out many concerns about provincial policies which are mandatory which I understand, at least the agriculture policies, have had no consultation with municipalities, or very little. They've been formulated. They're mandated. They're not under review during this review of the bill. You pointed out, as have many others, conflicts between various policies, and I think you mention one specifically that had to do with aggregates.

From my experience with the designation of the aggregates deposits, the big concern from the people, the citizens, is the transportation of aggregates and therefore you mentioned about the transportation corridors and the roads—very important.

How do you feel we should be dealing with the provincial policies? Do you think they should be reviewed completely and hearings held, have input before this bill is passed or afterwards? What is your view on that to really come to grips from a public point of view with the provincial policies?

**Mr Logan:** Without a policy review, I don't know how the grass roots of the community can be addressed in their concerns. I don't know who knows any better about what impact an aggregate resource or an extraction operation can have on a municipality than the local residents. So if there isn't public input and review of policies, I know of no other way that it can be fair.

**Mr Eddy:** The other thing I'll just briefly comment on is the difference between urban and rural Ontario. You pointed out the differences, and they have to be considered, I think.

**Mr Grandmaître:** If I may, I'd like to refer to Understanding Ontario's Planning Reform, and maybe the parliamentary assistant can answer my questions.

On page 3, "Municipal role": It refers to official plans. "The proposed legislation will require that all regions, prescribed counties, separated municipalities, cities in northern Ontario, and planning boards and municipal planning authorities prepare an official plan." Is there a deadline to have these plans in place?

**Mr Hayes:** No, there isn't.

**Mr Grandmaître:** If there's no deadline, how can we best serve Bill 163? Because now we're talking about the municipal role and all of these regions and planning boards, municipal planning authorities in northern Ontario and all prescribed counties will need an official plan.

**Mr Hayes:** If you don't mind, Mr Chair, I wouldn't mind if I could put this question to the proper people,



people from a county such as yours and people who are consultants and planners, you people yourselves. Those are the people we should be asking. Do you think that there should be a deadline on when all counties should—

**Mr Grandmaître:** We're the legislators.

**Mr Hayes:** No, no. We want to hear from those people, not just the parliamentary assistant's opinion. We want to hear from the public, the planners and the municipal politicians.

**The Chair:** Mr Logan.

**Mr Hayes:** I'm not meaning to put you on the spot, but do you feel, with Mr Grandmaître's comments, that there should be a deadline on when we implement that all counties have an official plan?

**Mr Grandmaître:** It says so; once they're in place.

**Mr Hayes:** Once they're in place, yes. But what you're asking here—

**Mr Grandmaître:** How long will it take, 10, 15, 20 years?

**Mr Eddy:** I see the point.

**The Chair:** Mr Hayes, you asked a question. Do you want to give a comment? Do you want Ms Dewar to comment? How do we want to proceed here?

**Ms Dewar:** If I may clarify, counties will be required to prepare an official plan within a scheduled time frame.

**Mr Grandmaître:** Counties?

**Ms Dewar:** Yes. That's just on the bottom of page 3 of Understanding Ontario's Planning Reform. The time frame will be prescribed by regulation, so each county will be dealt with individually.

**Mr Grandmaître:** So that means it could take 15 years. Thank you.

**The Chair:** All right. Mr Hayes, do you have some points of clarification to make?

**Mr Curling:** Is that the end of our time?

**The Chair:** Yes; five minutes per caucus.

**Mr Hayes:** Just a couple of points, because it has been mentioned in our committee several times that certain individuals or stakeholders have not been consulted with, and we do know that municipalities have been consulted with. I think we had a 90-day period for people to respond to this final Sewell commission, for example. We've sent out 28,000 documents, involving 65 stakeholder meetings, we've received over 600 written responses and we're still consulting with the public. I just wanted to make that very clear, that we are consulting, we are listening and we are prepared to certainly look at the presentations that are being made, and we are prepared ourselves to come forward with amendments to address some of these particular issues that have been raised here.

The other issue, dealing with the Ministry of Natural Resources just designating wetlands or what have you, what the Ministry of Natural Resources does is actually map the areas. They are not the ones that designate it. It's the municipalities that would do the designation in their official plans. I know the frustration many municipalities and the public themselves have gone through for years

and years. The Ministry of Natural Resources going in and just designating an area is not as a result of Bill 163, and I think we should make that clear. That has been the process for many years. But now we're looking at streamlining the system and involving more public. The public will be involved in the future when MNR, for example, decides to designate a wetland, and the landowner especially will be notified.

So I can appreciate your frustration dealing with designating wetlands and aggregate areas and things of that nature, but it's not something that came as a result of Bill 163, and I think we should understand that. If you want any further clarification, I would ask the staff to respond, Mr Chair.

**Mr Eddy:** I think the frustration is with the changing of the rules.

**The Chair:** Let me just ask Mr Griffiths if he has a response to the comments.

**Mr Griffiths:** I think the only comment I have is that Bill 163, in my opinion, is changing it, because it's changing from "have regard to" to "be consistent with." "Have regard to" gives you the opportunity to have the public, in the official plan review process, comment on the wetlands, comment on aggregates and these designations that go in the official plan. If we have "be consistent with," it leaves very little flexibility, in my view, for the public to alter what the Ministry of Natural Resources identifies as a wetland site.

**Mr Hayes:** We understand where you're coming from, but we feel that "be consistent with" is something that has to be there so that we have good planning in this province.

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**The Chair:** Okay. We've run out of time. We thank you for participating in these discussions, Mr Logan and Mr Griffiths.

**Mr Logan:** Thank you very much for the opportunity.  
PATRICIA CARLOS

**The Chair:** We invite Ms Patricia Carlos. Welcome, Ms Carlos.

**Ms Patricia Carlos:** I thank you for allowing me this opportunity, ladies and gentlemen. I am bringing your attention today to the part of the bill which is the conflict-of-interest portion. My report has been written without malice intended. I have to mention names because I feel that those are the factors that are truly involved. Excuse me while I get my glasses.

I'm here to address a problem, ladies and gentlemen, which has plagued many citizens of Chandos for many years. Chandos township is ruled by an élite group: seasonal residents who spend 30 to 60 nights at best per year on their cottage property on Chandos Lake. This group comprises the Chandos Lake Property Owners' Association, which I will refer to as the CLPOA for the sake of typing, and chooses to install a council which is committed to carrying out its wishes first and other residents' wishes last, if at all. I shall demonstrate how this is done, its effects upon residents and payoff for services rendered to one supporter.

The CLPOA began in 1947 as a social organization bringing together the few cottagers on Chandos Lake. Later, it took on the responsibility to ascertain the water quality of the lake and protect fish populations in it. By 1973, cottage development had increased considerably and there were about 700 members in the club. Also in 1973, a proposal of a condominium and massive lake development, over seven miles of shoreline, was being looked at. This alarmed the lake association, which then became incorporated in order to take on the legal battle.

In the fall of that year, its members successfully installed their slate of council members in the municipal government. In the brackets, I have little numbers. I actually had attachments, but you haven't received them. There are only eight copies, so if you'd like to refer to those, please ask for them. Bill Domm was the selected reeve who also took on the job of selling the negotiated lake lots, which were considerably reduced in number from the original proposed amount. Membership today stands at about 700 to 750, although only 20 to 30 families attend annual meetings. There is also another small group of ratepayers, of which I am president.

Elections: I'd like to refer to how these are done. To contest the CLPOA slate—and I refer to it as a slate because they install five people, and they tell you how to vote and who to vote for—successfully is impossible, I find. In 1991, Joan Rayment and I ran for council. Election day was very good to us; Joan scored the highest number of votes and I the third highest. However, the three advance polls proved that most seasonal residents voted in block. Two other councillors received similar votes, 579 and 570. A little pink card was distributed with a newsletter and some of these cards were seen visibly in the voting booth. The end result was that their team received two votes to our one vote.

Joan and I paid for our own election expenses. The ratepayers' association, which I was no longer the president of at that time, sent out a two-page newsletter. However, the CLPOA targets \$2,500 to the election campaign, sends extensive newsletters, sets up candidate meetings for its candidates and puts together for its candidates a precise telephone committee. On the eve of election, the campaign chairman called three times from Texas to get the results. In the attachment, you will see quite clearly listed that Mr Harold Forbes is the campaign chairman.

This is where the payoff comes in. Mr and Mrs H. Forbes have a cottage on the West Bay basin. In 1990, Mr Forbes as well as other members of the CLPOA executive, including myself because I was there then, received copies of a letter from the MNR which cited the west basin of Chandos Lake to be frozen to further development. All those things are attached. However, Mr Forbes wished to sever his property and build a permanent home on the severed part. Mrs Forbes applied and, on November 27, 1991, received approval with conditions for the severance from the Peterborough county land division committee.

The approval raised some controversy from several ministries. In 1993, the county of Peterborough's official plan was accepted. It omitted this fact, the fact that West

Bay basin was frozen, citing only that Gilmour Bay may not be developed. This was based on a lake carrying capacity study done by Michael Michalski Associates for the township of Chandos. The study was requested by the CLPOA, and \$5,000 was donated towards the total price of \$32,297. Mr Harold Forbes sat on the executive of the CLPOA.

Cause number 1: amalgamation. Amalgamation with the township of Burleigh-Anstruther is unquestionable and denied by this council and the CLPOA. Without going through the arduous background of these past six years, I shall focus on a newsletter sent to taxpayers this year. In that newsletter—and there are copies of it—council declares clearly and adamantly its refusal to accept the boundaries committee proposal for amalgamation. It criticizes and points to only negative facts of the study. These are based on worst-case scenarios, such as expanding quarters of municipal offices. When they made comparisons of the cost increases, they looked at the worst scenario and of course proposed it. Also, the facts submitted for making comparison in taxes were distorted because Chandos has included 123 tax bills assessed at 43, having a value of \$7.45, and 16 tax bills assessed at 64, having a value of \$11.09. These 139 tax bills are for a 100-acre parcel which would normally carry one tax bill.

Also, in this newsletter no reference is made to Apsley hamlet and to its benefits to residents. It does not explain the fact that Chandos does not support the arena-community centre in Apsley. That of course is part of the additional cost that would be levied to the taxpayers in Chandos.

This newsletter resulted in 700 negative responses to amalgamation and about 20 positive ones. Those who signed the petition—and there was a petition signed, by the way, with 200 signatures on it, which I don't mention because it's also in the attachment—mostly did not repeat their response. The one-sided and biased view of council deliberately misled taxpayers and offended many.

Cause number 2: infrastructure. Recently, taxpayers got a notice about the infrastructure program and were asked where the \$300,000 available funding should be spent; that is, \$100,000 from the township and \$100,000 and \$100,000. Less than 100 responses came in for this one, but a greater number opted for road improvements. In spite of this, council has opted to also—it went for some road improvement—expand the municipal office and the Chandos Glen Alda Community Centre. They have commissioned Nowski Partners to make the drawings. The decisions to do this were made in caucus. Taxpayers were not informed.

Please note the conflict-of-interest note and the fact that two other submissions were not received. In the copies, there are minutes of one meeting stating that Mr Rogers, who is our Reeve, could not attend because a conflict of interest arose in the fact that his son had a friend in the company that was to supply the drawings. At that meeting also it was requested that two other tenders be asked for. However, those two tenders didn't come in. The following month there wasn't enough time; they did not come in, so Nowski was chosen.



I object to the expansion of the community centre. There is no need. In 1993, \$1,500 income was received for user fees. This has been and is the yearly income from rental. A small seniors group donates \$500 for the use of the hall 20 times per year. Whereas the community centre in Apsley suffices the larger area, supplying it with recreational programs, Chandos has not supported it these last six years.

The effect of all this is that the situation in Chandos compares to a demagoguery. I refer to it as a fiefdom of the CLPOA. The situation is intimidating and threatening. Those who resist the system will be trampled upon. Two of the executive of the ratepayers association, that is our small one, have resigned because their economic status is threatened and has been threatened. This situation cannot be expanded to other communities. Democracy will take a back seat to the élite. Chandos council is acclaimed time after time; that is, in the election. No one wishes to contest the slate.

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I do not attend council meetings because I'm not welcome; I did in 1991. I have requested twice to sit on the finance committee and have been denied. When I recently asked for the 1993 financial statements, I was not allowed to remove a copy from the office nor make one on the copier. I had to hand-copy the financial statement. In contrast, I'm always given or loaned a copy by the Burleigh-Anstruther municipality. I've been told that I had to pay a \$125 fee but later found that this payment should have been made by the township. I contested a bylaw, and they said that I should pay the \$125. However, I didn't need to in the long run. I've been told that I would have to pay for the time it takes to get copies out of files. I was told that I could not tape record council meetings; a bylaw was established to effect that. I was criticized by members of council for asking too many questions and wasting too much time.

The first organizing meeting for the Chandos ratepayers' association, in 1991 that was, was attended by the past reeve, George McKie, and wife. They sat themselves directly in front of me and harassed me throughout. We suggested that they leave but did not force them to, and they did not. Naturally, their harassment cast doubt on the ability of the association to work effectively.

I have been called a liar on several occasions, and after responding to the attached newsletter on amalgamation in a column "Apsley and Area," outcries of "liar" came by telephone to the editor of the Bancroft Times not once but several times.

Are there personal gains to be had by members of council under this structure? Perhaps, but very difficult to prove. The present reeve, until 1992, sold real estate. He had every household listed on his personal computer. Imagine the edge he had over other agents. The present reeve retired from IBM some 10 years ago after 26 years of service, yet the township purchased computer hardware in Owen Sound. The first software program was soon junked after the company went bankrupt. In 1989, the first fire truck for Chandos—

**The Chair:** Ms Carlos, I should have told you a bit earlier, but I'm not sure about some information that you

provide here that's for the public record that may be a problem to you legally in terms of some of the things you've been saying. As long as you're aware that what you're saying is on the public record and that it might put you in some difficult legal situation, then continue, but I am worried about some of the stuff you've said that's public that is a bit of a legal problem.

**Ms Carlos:** Okay. In 1989, the first truck for Chandos was to be negotiated by the reeve at a rate of \$10,500 to \$12,500—that is public information; there are minutes, and copies of the minutes are with you—but it came in at \$15,000. Actually, the cost was \$14,500. At one point it was minuted that the reeve would negotiate, and if they would not accept \$10,500, he'd go as high as \$12,500. Apparently, the truck cost \$15,000.

If limits cannot be put on interest groups to put forth a complete slate to council, as suggested in David Hobson's letter in the Examiner, December 1973, "That a citizen may have only one municipal vote regardless of how many properties he owns," then candidates to government should have to disclose fully their allegiance to groups whether there is pecuniary interest that is easily seen or not and this disclosure must be made available to the electorate.

The CLPOA usually has one sympathetic local family member on its slate, in this case I.E. Tanner, and usually it is someone connected in a business relationship to the township. However, this person must admit to the fact that he or she is beholden to the CLPOA. In Mrs Tanner's case, although she declares a conflict of interest when the circumstance arises, it is obvious that her husband will be favoured over others when it comes to contractual work he does for the township. And in Mrs Tanner's case, she declared to many that she was running independently. Now, that's hearsay, but I can get people to defend me on that.

I conclude now by asking that you look at this case from the prospect of it being replicated throughout Ontario. As well, Chandos desperately needs somebody's help. Would you please help?

**The Chair:** Thank you, Ms Carlos. We are three minutes over time, but I want to give any member an opportunity to make some brief comment with respect to this if they want.

**Mr Anthony Perruzza (Downsview):** It's not so much a question to the witness here this morning. I just wanted to know from legal counsel, because there are a lot of serious allegations in this brief, if we have the authority to request a police investigations of Chandos' proceedings.

**The Chair:** Is there a legal opinion on that question?

**Mr Tom Melville:** I'm Tom Melville, legal adviser with the Ministry of Municipal Affairs. You had asked about legal authority for a police investigation?

**Mr Perruzza:** Given all the allegations that are being made here, and they're being noted and we have a written copy, it would seem to me there are a lot of sort of improprieties going on in this Chandos county. I wonder if we have the authority, having received this, to request the police to go in and pursue these allegations.

**Mr Melville:** I can't really answer in terms of the committee's authority because that's not an area that I'm familiar with. In terms of a police investigation, my understanding is that any citizen can bring forward their information to the police.

**The Chair:** Mr Eddy, just as a brief comment by way of suggestion or help.

**Mr Eddy:** Mine was just a follow-up that anyone can apply to the Minister of Municipal Affairs as well for a review of the municipal operation, and I know that's been done in the case. Go ahead.

**Mr Curling:** My comment is that I hope you have an opportunity to read the conflict-of-interest legislation that's being presented here. Not that we agree with all of it, but it would be helpful in the sense that assets and all that would be declared by all those who are running for offices or sit on boards. I hope that conflict-of-interest legislation will assist you and answer some of the questions you talk about here.

**The Chair:** Ms Carlos, we're sorry. We have run out of time. We appreciate you coming and taking the time to communicate the concerns that you are experiencing in that committee. Beyond that, perhaps you may find a different way of dealing with your problem, okay?

**Ms Carlos:** I have already approached the Ministry of Municipal Affairs with that specific problem of conflict of interest in the west basin area, and I was told it was not in conflict and could not be used.

**The Chair:** It's very difficult for us as a committee here to suggest what recourse you have. The mandate of the committee is to of course deal with this bill and to get people's input with respect to it, as opposed to how we might be able to help with that particular matter.

**Ms Carlos:** Can I ask one question with the bill then? I understand that assets have to be disclosed. I understand that you have to disclose if you're on a board of whatever. However, how does that relate to being on a board, on the executive, or being affiliated with a group, a very strong interest group? I mean, if you're a politician, you have to declare, "I'm running for this and that party." How do you declare, or what kind of—

**Mr Paul Jones:** Bill 163 makes no requirement for someone to note their affiliation with the legion or the Rotary or any ratepayers' group or organization. It only requires disclosure of assets, liabilities, sources of income that are specified.

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BRUCE EDMUNDS

**The Chair:** We invite Mr Bruce Edmunds.

**Mr Bruce Edmunds:** Thank you, ladies and gentlemen, for the opportunity of presenting my thoughts and concerns on Bill 163. You have a copy of my presentation. The first paragraph may seem strange to you, but we did bump into some particular argument as to what subjects we could bring up here, and very particularly my concern lies within the policy statements and their implications. As I read the bill—I'm not a lawyer, I'm not a planner, I'm just a regular citizen. But as I tried to struggle my way through, I saw specific reference to the policy statements within the bill, tying them in as part of

it, so I'm going to continue my discussion involving those policy statements.

Very briefly, my wife and I own approximately 220 acres of woodlot property in north Peterborough county, and these are personal concerns and thoughts that I have, although I do work with two woodlot associations and certainly will be putting the same thoughts and recommendations through to them and working through. The concerns go beyond my property boundaries, because I'm very concerned about the effect on the community and the province and I feel that the bill and the policy statements are really in a lot of ways an overreaction on the environmental regulation and I'm afraid what we will do, as I've said here, is we'll kill the patient in trying to treat the disease.

Before we go any further, my wife and I have a woodlot because we believe in protecting the environment and working on it. We've put our money where our mouth is for the last 25 years, working diligently to improve our woodlot and improve its habitat environment. So I'm not coming from a position of being anti-environment or anti-habitat protection.

But I do think, coming back in on overview, that the bill is overly aggressive on regulation and very directly it's going to cause a substantial loss of property market value for many rural land owners, will paralyze much of the rural economy and will increase unemployment and social costs in the rural areas. As well, and I think this is probably the saddest part of all, I think it's going to poison the attitudes of land owners towards making any contribution to environmental improvement.

I don't know whether it's been considered, but the bill is going to trigger a very major loss in land tax revenues for municipalities, as properties designated significant and those that are denied development under the community development conditions are a perfect condition for a lowering of assessment and then consequently lower tax revenues.

I'm very concerned—and my background was as an insurance broker in industrial coverages, and of course the things that we were involved with were contracts; in fact my career then was reading documentation—and I really was shocked at the shoddiness in construction of the total package as it's presented. I think perhaps it was done too hastily and the policy statements from different directions all put together, but you'll find gaps and overlaps and major questions that really should be addressed.

On the specific impacts of the denial of property development rights, either through the economic or community development section or the "significant" designation, it is going to affect property values up to 50%.

Now, just in case you think I'm off base on that, I've had an appraisal done. We have actually three properties. I've had appraisals done on two, and while admittedly the appraisals were directed to gearing myself to how to respond to the last change of capital gains, I also asked the appraiser to give me an appraised value of the properties with all development right removed. Now, to me, and I haven't got that many resources, our property



values are dropping by \$45,000. That's why I'm here. That's one of the main things, because that certainly has got my attention, and we're going to carry through with that very severely.

The other thing that's being done of course is the tremendous air of uncertainty that's going to be created by the policy statements. I don't know whether you have looked at that part. There are so many areas that are judgmental calls as to what somebody thinks has happened to the aesthetics or what is a view of consequence or, more particularly, coming down into point 3, what's going to be under the species classifications of "vulnerable" and "threatened."

I don't know if you've done your homework as to how those come about. Those terms were designated by the federal government. The other one that's there is "endangered." To get on the endangered species list is a very detailed, controlled system that goes through to a final committee for a review. The other categories are open to organizations that can establish themselves as recognized professional organizations. As I understand, and according to documents by MNR, there are now five organizations that are working on the "threatened" and "vulnerable" categories, and just to give you a little indication, under "vulnerable," one of those organizations has got 542 plants—just plants. That's not trees, that's not insects, fish, reptiles or whatever, just plants, 542, and I read one of their newsletters the other day and they gleefully said that they're working like crazy on another list of 12,000 to see how many more they can get listed.

Now, that's just one list, but there are five lists, and if you think the land owners and the people are going to be able to sort their way out of all this mess, I'm sorry, you've missed it, because the land owners are just going to be targets of the groups that want to tie up and get the free use of land—that's really what it comes down to—without any direct contribution.

The other thing is adjacent land, looking very quickly at 120 metres. Do you know what that means? That's the equivalent of the depth of four city lots, and that's to allow wildlife to pass through. I think that again becomes an unreasonable level. Again, on two of our lots, where I had a detailed scale plan to work with, the wet spots were all identified. We took the 120-metre buffer zones, and out of 130 acres to start with, there is approximately one acre left outside of buffer zone, and that's in two tiny pieces. That's the effect of this. I'm up on the Shield, and I think I've said in here too that your wetlands policy was designed for southern Ontario below the Shield, and this 163 just says now it covers the rest of the province: a totally inappropriate policy being plunked into place without any serious consideration by the professionals.

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**The Chair:** Mr Edmunds, I don't mean to interrupt you, but if you're going to explain each item, we will run way over time, and we're close to the end. I just wanted to tell you that.

**Mr Edmunds:** Those are pertinent points to keep in mind. Those points are going to be the ones that are going to drive the tax revenues down on thousands of acres of land, and I've said in my report—you've got the

rest of it—the municipalities are going to be stressed by the additional costs of planning, which this bill is going to dictate down on to their shoulders, and I'm reasonably sure the province isn't going to stand up and give any further consideration to the municipalities for that.

In addition, now we're going to have properties with lesser tax revenue. So we have then the situation that everyone else's land tax is going to go up, and as the word of this starts to get out, I sense a tremendous groundswell of serious concern by the citizens of Ontario, the citizens, incidentally, who I think have been kept very much in the dark on this. This is not a bill that's known by the public at all. It's very hard to get even a line and get information on it.

I do believe—I touched on this point before—you're going to poison the attitudes of people who have land and have responsibility. To have tree cover, to have wetland involved on your property is going to be a detriment. That's the sad, sad point that you've driven home, and what we will see without any question—because to maintain a woodlot, for instance, it takes an awful lot of hard work, it takes dedication and it takes a willingness to spend a lot of money too. But if you're going to have your rights removed because you own a woodlot, well, people are just going to walk away. The woodlots are going to start to decline in value. We haven't had a lot of fires on private woodlots lately, but look out if there's a drought. I think that will start to happen. We know right now woodlots are being stripped, which is very sad, and contrary to everything I believe in, but they're stripping them right now, because they know that it's going to be a tremendous detriment to have it there.

I put before you what I believe are some constructive recommendations. I believe the significant wetland areas must be identified, must be surveyed by the province, thank you, so we know what boundaries you're talking about, and that all should go in place before 163 is effected. I can't see any other way around it.

There definitely has to be a program of compensation for the loss of development rights for lands that are designated or the denial of development, because again, God bless the province, you've driven a real hard bargain on assessment, because every assessor coming out talks about your development rights and that's where they keep nailing you to get the taxes up. You're removing it in an awful lot of cases, so there's got to be compensation. There's going to be lower taxes. There has to be.

I'm recommending that "vulnerable" and "threatened" be deleted from the bill until there is a reasonable, respected and monitored system of species identification, as in the case of "endangered," that can be established under federal jurisdiction so we get some common elements and features running through across the country.

Please have your people reread particularly the policy statements. The act I can't follow, because that's a planner's glory, obviously, but look at the policy statements for the gaps.

I disagree on the disclosure requirements for municipalities too, incidentally. I do believe the necessity for people to declare their personal assets, their income sources, and for that information to be publicly available

at the clerk's office is going to deter many very talented people from being prepared to put their name up for public office. I believe we have to have mechanisms for conflict and we need to have severe ones with fines, but I do not think we go at it this way. I think the approach is wrong, the idea is right.

I've summarized, I've emphasized what I believe are the real key points. I think the essence of removing property rights is one that must be decided by the total population of the province because everyone is going to be involved with it. If you're taking my \$45,000, I'm going to want recourse and I know an awful lot of other land owners are in exactly the same position. We want to work it out now, before it becomes law. If it won't, then obviously we'll have no course but to look to legal recourse. There's too much at stake. We can't pass that up.

**The Chair:** Mr Hayes, quickly, with some clarification.

**Mr Hayes:** Okay, real quick, Mr Chair. Thank you, Mr Edmunds, for making the presentation, but I think you're possibly jumping ahead a little bit because we are still putting policies together. I just wanted to let you know that we do have an implementation advisory task force that is made up of various people, like farm organizations, Association of Municipalities of Ontario, food land people preserving food land, things of that nature. There are all kinds of planners and different institutions involved in this task force and there are going to be very comprehensive policies that are being put together as a result of this policy. They're not down in black and white right now.

The other thing is that the land use planning, actually by its nature, does allow different uses on different sites. Of course, property owners may, for example, profit more significantly with some of these than they would if it was designated—or even if it is designated for urban uses—maybe more so than if it was for rural uses. People are dealing with those right now; there is a lot of consultation and a lot of public input coming into this. Now it's all over the province, sir.

**Mr Edmunds:** Yes, I realize that. I do appreciate your comment that way, but it is rather sobering when the bill has had first and second reading. The policy statements are very specific. The bill says—

*Interjection.*

**Mr Edmunds:** All right, I know you want me to shut up. Sorry, the bill says, very specifically, if the municipalities do not apply the conditions of these policy statements as written, the province will remove their right to be involved. I question that legally because we, the voters, put in our municipal councils and I'll be damned if you can come along and suspend their authority. It's as simple and straightforward, in my opinion, as that.

**Mr Eddy:** They do in London-Middlesex in the middle of the term. They are gone.

**The Chair:** Mr Edmunds, we appreciate the concerns you've brought to this committee, and you've brought quite a number. I am convinced the members will review your suggestions very carefully as we go along.

**Mr Edmunds:** Okay, I hope so. Thank you very much indeed.

MARK B. STAGG

**The Chair:** We invite Reverend Mark B. Stagg. We are running a bit—

*Interjections.*

**The Chair:** Order, please. Mr Eddy, it would be good to exchange these views after we've done this. Reverend Stagg, I'm sorry, we're running a bit late.

*Interjections.*

**The Chair:** Could I ask the members to keep some order, please. Reverend Stagg, we have 15 minutes for the presentation. We are running a bit late, so I would urge you to keep within that time frame, okay?

**Rev Mark B. Stagg:** Thank you. The general intent of the new legislation and proposed policy statements as outlined in the minister's statement to the Legislature, May 18, are very commendable. There are some details, however, in fact which will hamper the achievement of the government's goals and will reduce the ability of municipalities to fulfil their responsibilities and role in the process.

Many of these matters have been or will be raised with you by representatives of the regional planning commissioners, county planning directors, and AMO. I won't repeat those. I generally agree with them. My points, therefore, are either to emphasize a few of theirs or to raise a couple of extra points.

As a resident of the county of Haliburton, I would note its unique pattern of small settlements and many groupings of seasonal residents set within a huge area of a most beautiful natural environment comprised of rolling hills and containing over 550 lakes and linked by a complex drainage system.

The unilateral implementation of sweeping policies to protect the environment, which one surmises were designed—and properly so, I would add—to primarily deal with the development pressures of southern Ontario, would inflict considerable economic and social harm in the sense that further development would be largely prohibited.

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Such collateral damage, in the county of Haliburton and other areas of the province with similar characteristics, could be avoided if local rather than Toronto values were used to implement the proposed policies. One also notes that a number of the rural areas, such as the county of Haliburton, have had unemployment rates that have reached 30%, social assistance costs which have climbed over 800% in the last five years and, because of that, cannot afford all of the sophisticated and expensive studies and processes which are common to southern Ontario to deal with the development pressures in that area.

At the same time, I think it's very clear that without at least some broader implementation of the policies now proposed, some of the finest environmental jewels of the province will continue to lose their sparkle. There is then an imperative case, with necessary adjustments and



improvements, for the proposed legislation and policy statements to proceed.

I have a few particular points which I'll now go through. My numbering follows the sections of your bill.

Section 5: With respect to section 2 of the Planning Act, the section recites the key ingredients to achieving the purposes of the act, namely sustainable economic development in a healthy, natural environment. There are many ministries and agencies of the government that are prime actors respecting those cited matters; for example, Natural Resources, Transportation, Environment and Energy, Economic Development and Trade. To achieve the purpose of the act, all ministries and agencies of government should be subject to the provisions of this section.

Subsection 6(2) of the bill: The same point I've just made, I think, applies again. Also, the replacement of existing wording "shall have regard to" with the wording "shall be consistent with" will impose too strict a conformity to singular provincial standards, preventing the judicial balancing of official plan policies by municipalities to fit local conditions. Recognizing that through its approval process the province would remain the final judge, an alternative wording might be "shall be consistent with the spirit and intent of policy statements issued under subsection (1)." Such a wording would also allow for easier balancing of the interests of the various ministries and agencies of government, all of whom, I've just recommended, should be subject to such policy statements.

A compromise might also be considered; namely, that the Minister of Municipal Affairs, other ministries and agencies of the government might follow the above recommended wording together with municipalities that are preparing their official plans or making decisions pursuant to an approved official plan. In the case of municipalities, upper or lower tier, that don't have an official plan, then perhaps the tighter wording proposed in Bill 163 might be appropriate.

I have a couple of examples of the problem that will be created when you link the proposed wording of 6(2) with the proposed comprehensive set of policy statements:

First example in policy A, goal 1, sections 1.1 and 1.2, refers to prohibiting negative impact. Negative impact has not been defined, but adverse effect is defined, including "the impairment of the quality of the natural environment for any use"—I repeat—"for any use that can be made of it." Since much of rural Ontario consists of natural environment, the regulatory impact of combining the proposed legislation and the policy would be draconian.

Second example in policy G, implementation, section 6.1: The requirement for an environmental impact study is recognized. However, there will be many simple and repetitive situations where a municipal class EA approach created, say, through an official plan policy would expedite the process without loss of integrity. If that requires legislative authority, I think it should be provided.

Section 8 of the bill, proposing new sections 14.1 to

14.8, inclusive, to the Planning Act: The provision of powers proposed for municipal planning authorities is very regressive, whether for counties already having their official plans and planning departments or for counties not having official plans, with or without their departments, it would entice division where unity has hitherto prevailed and it will encourage parochialism where cooperative effort should be fostered. The provision, if implemented, would significantly negate the responsible and practical implementation of planning for many of the matters mentioned in section 2 of the act which require a larger scale, that is, a county-wide approach.

Obviously, however, care should also be taken not to overlook or negate the cooperative efforts that go on already between municipalities, upper and lower tier, through these ad hoc or formal agreements.

Section 9 of the bill, proposing a new section 16: The proposed subsection is fine, as far as it goes. However, the Sewell commission at recommendation 47 indicated that the plan formulation process should include some examination of options and alternatives, and the rationalization of the preferred plan. This would be superior to a plan that might be driven by particular interests, and thus obviously open to some political expediency.

Section 10 of the bill: The proposed legislation should offer to county councils the same opportunities and encouragement for planning as has been provided to councils of other forms of upper-tier municipal government. Those counties that prepare and adopt official plans and have adequate arrangements in place to implement them and to administer a planning process should, upon request, receive delegation of approval authority from the minister for any or all of the matters which may be granted either pursuant to this or other provisions of the act.

The preparation of plans by county councils should be mandatory. To recognize some variations in the degree of urgency and the lead times to put the preparatory mechanisms in place, proposed subsection 17(7) might be worded to provide an ultimate deadline or an earlier deadline when prescribed. If the government is truly serious about achieving the purpose of the act and addressing matters of provincial interest, then these most worthy goals will only be properly achieved if all upper-tier municipalities are undertaking the responsibility the legislation implicitly indicates is theirs. If responsibility for the construction and maintenance of elements of the community infrastructure and hence resultant settlement is already a county mandate, then surely the proper and orderly patterning of that infrastructure and settlement should also be mandated. One follows the other.

Section 37; new section 65: This recognizes the alternative dispute mechanism, and I'm suggesting they're most timely and welcome and I believe they should be strongly supported. I suggest consideration might be given to authorizing the minister to prescribe procedures or processes that experience might indicate are needed. If that is the case, you'd need a parallel amendment to section 42 of the bill.

Section 45 of the bill; new section 72.1: Just a small legal point. It would be useful to indicate, as and when

the comprehensive set of policy statements are adopted, whether they or the provisions of existing official plans are to prevail if the latter, official plans, are in conflict with the policy statements or are silent on certain mandated requirements.

Finally, if I could make only one recommendation, it would be to reword and temper the provisions of subsection 6(2) of the bill and the proposed requirements of subsection 3(5) of the Planning Act.

This is a personal submission and I make it to you most respectfully.

**The Chair:** There is time for a very brief comment by the members if they wish to make one.

**Mr Grandmaitre:** Reverend, did you have an opportunity to go before the Sewell commission to highlight your concerns?

**Mr Stagg:** I did. I also had the privilege of being a member of one of the working groups.

**Mr Grandmaitre:** One of the working groups?

**Mr Stagg:** Yes, on cottage country. I was invited to participate and help in the original drafting of the first draft proposals on the policies.

**Mr Grandmaitre:** Do you see in Bill 163 any of your input while you were sitting on this committee?

**Mr Stagg:** Both there and subsequently I've had the opportunity to have input, and I've seen definitely some results of a few of the suggestions I've made. I was very happy, for instance, in the latest set of policies for housing that the minimum level was set at 10,000 population rather than 5,000 for the percentage rule. In Haliburton county, for example, where you've got two and a half times as many seasonal homes as permanent, the 25% affordable policy would have been nonsense. So there have been some very good changes made. That's why I'm so happy with the process being so open.

**Mr McLean:** I just want to thank you for coming before the committee this morning and relating your views. I don't need any clarification. You've made it very well. I appreciate your coming.

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**Mr Wiseman:** Thank you for your presentation. One comment I would like to make, though, is that one of the things I'm hearing from a large number of people, both who are in the development industry and who are ratepayers and community activists and environmentalists, is that we have to get rid of the ambiguity around phrasing. "Shall have regard to" leaves it too wide open for a council to make a decision having regard to the policy but ignoring it in this case, but having regard to the policy and enforcing it in another case, which people see as being similar, and this leads to a lot of case law and fights in courts and so on.

Even the developer in my riding said to me: "You know, what we really need is clarity. We don't need maybes, we need it to be defined. If you tell me that I can't build on class 1, 2 and 3 farm land, that's fine, I won't buy it. But don't tell me I can't build on class 1, 2 and 3 farm land and then say to somebody else, 'Well, maybe under this circumstances you can go ahead.'"

What they're asking for is clarity, to define it: "You tell us what we can do and then we'll go ahead and do it, but don't start changing the rules and have them change under us as we go along." That's what community activists are also saying, that we need a defined way of interpreting what the act says so we can act as another check in the balances of checks and balances.

**Mr Stagg:** May I respond? I agree that the current wording is too loose. I was hoping that the wording which seems to be supported by the counties and the regions was sort of the middle ground and that's being consistent with the spirit and intent. I think, in terms of clarity, I have to agree with you.

On the other hand, you can't legislate common sense and if you enshrine absolutes then you start to go from the sublime to the ridiculous. I think Mr Gary Cousins indicated, in the county of Wellington, you've either got prime farm land or you've got existing settlement, so you've got natural environment areas. You've got nothing left where you can sort of do anything according to the policies if you take this absolute approach.

Haliburton county, which I tried to illustrate is either small settlements or natural environment—there's sort of no middle ground where there are some grey areas perhaps indicated in the policies. There's really very little in practice and I think this is what everybody's trying to urge, that there should be some real strength and force to the regulations and the policies, there's no question about it, but you still finally allow a certain amount of judgement.

I think the particular concern a lot of people have is, will the values for many of the people who will be in the final approval process of southern Ontario, with all respect, fit, shall we say, the values of the balances which really only the people in, say, Peterborough county, Wellington county or Haliburton county or wherever, can finally evaluate?

There has to be a balance between, say, the natural environment and the interests of human beings from a social and economic point of view.

**The Chair:** Reverend Stagg, we've run out of time. Thank you for coming and participating in these hearings.

**Mr Stagg:** Again, thank you for your process.

**The Chair:** Mr Hayes wants to make a correction.

**Mr Hayes:** A correction, yes; it's not a clarification, a correction this time.

When Mr Edmunds was here and I commented on the implementation advisory task force, I said, I believe—we'll check Hansard—I talked about the policies being worked on now. In fact, implementation guidelines, and implementing the policies and guidelines, is really what I should've said.

#### CITY OF PETERBOROUGH

**The Chair:** We invite the city of Peterborough, Ms Anne Marie Predko. Welcome, Ms Predko.

**Ms Anne Marie Predko:** Welcome to all of you to the city of Peterborough. I'd like to say good morning first of all. I'm appearing on behalf of Mr John Hart who's the city solicitor for the city of Peterborough. I'm



a student at law in the legal department in the city of Peterborough.

My presentation this morning is a little different than what you've heard so far. I'm here to explain and expand upon a letter written by Mr Hart to the minister dated May 11, 1994. I believe you have a copy of that letter as an exhibit.

In this letter and in my presentation, the city of Peterborough is requesting an amendment to section 67 of the Planning Act, which is not something that you've examined closely up to this point with this bill, but an amendment to allow fines collected under bylaws passed under the power of the Planning Act to be payable to the municipality.

You can probably ask yourself what this proposed amendment would have to do with Bill 163, which is of course your mandated interest this morning. I would like to point out that from the city's point of view, Bill 163 provides new and augmented powers to municipal planning authorities and that the municipalities would like to exercise these new powers, but without the tools necessary to go about that exercise, much of the bill's impact may be lost. Our position is that municipalities should be able to finance, as much as they are capable, their own operations from local sources, and in that way they can ease the pressures on upper levels of government to provide financing.

Currently in Ontario, municipalities are very unequal in terms of the revenue they can generate from planning matters. Some municipalities, for example, Oshawa, Scarborough and Kitchener, receive all of the revenue from Planning Act prosecutions from their local court office. Others have become so frustrated with not receiving this revenue, for example, the city of London, that they have applied for and received without opposition from this government special legislation to allow them to receive that fine revenue. Still others, like the city of Peterborough and also North Bay, Brampton, to name a few, do not receive this revenue from the court office.

**Interjection:** Just to mention a few.

**Ms Predko:** Just to mention a few. The source of these inequalities, except in the case of special legislation, is not really clear. In the minister's response to Mr Hart, he states that, "such fines are payable to the consolidated revenue fund."

I've also provided for you this morning certain relevant sections of the Planning Act and other provincial legislation dealing with fine revenue, and maybe we could just look at that briefly for a moment.

First of all, it's clear from the Planning Act that there's no direction as to where this revenue would be payable, and that basically leaves the court offices turning to other pieces of legislation to find out where they need to pay the money. The Administration of Justice Act appears to indicate that the money from municipal bylaws would be payable to the municipality. It's an implication, because what the Administration of Justice Act actually says is all the revenue goes to the Ontario consolidated revenue fund excepting this revenue generated by municipal bylaws.

The Fines and Forfeitures Act basically says that all fines imposed for the contravention of any provincial statute are payable to the consolidated revenue fund, and presumably that's the position that the minister is taking in his letter to Mr Hart.

The apparent inconsistency between these two acts, the Fines and Forfeitures Act and the Administration of Justice Act, may have caused difficulty in the past in terms of municipal matters, and you'll notice in the newly amended Building Code Act, both of these provisions have been excluded in the proceeds of fines section of that act, which is subsection 36(9).

The amendment which I propose to put into the Planning Act—obviously that's not my position to do but that's potentially your position to do—would have similar exclusions to that contained in the Building Code Act. If you turn to the second page of the handout of legislation, you'll see that this is a proposed amendment wording and it does exclude both the Administration of Justice Act and the Fines and Forfeitures Act from applying.

Bill 163 promotes, we believe, efficient, local-based planning. It would seem ironic if the aim of the act was diluted by lack of financing at a local level. This proposed amendment will ensure that all municipalities, whether they are large, small, upper-tier or lower tier, can afford to enforce planning matters. The prosecution of planning matters is not pursued with a view to making a profit, but they can be very expensive propositions. They often require certified copies of title documents, the posting of orders and a lot of focus of staff resources.

My position this morning is that good enforcement must be the watchdog of good planning, because any plan that a municipality makes is only as good as the enforcement of that plan. At the city of Peterborough, we believe Bill 163 recognizes the important role that municipal governments must play. From a provincial perspective, this proposed amendment would ensure that all municipalities could be treated alike.

At this point, I would welcome any questions or comments. I'd like to thank you for giving me the time to make this presentation to you this morning.

1130

**Mr McLean:** Subsection 24(5) of the Building Code Act, that's the one that you want amended.

**Ms Predko:** No, actually we'd like an amendment added to the Planning Act similar to that section in the Building Code Act.

**Mr McLean:** The Planning Act to be amended to include a provision similar to subsection 24(5) of the Building Code Act. That would then allow you to collect the fines?

**Ms Predko:** Yes, it would.

**Mr McLean:** Who collects the fines now for traffic violations? Do they go to the city?

**Ms Predko:** Highway traffic or parking?

**Mr McLean:** Do they go to the city?

**Ms Predko:** It depends on which it is. Parking infractions come to the city; highway traffic infractions go to the province.

**Mr Grandmaître:** It's the local bylaw, it's the local municipality.

**Ms Predko:** Yes.

**Mr McLean:** The other question has to do with the Planning Act, with regard to the upper tier. There have been some referrals and amendments, and you can review the application, and the minister can refer any plan. That's what they're proposing. Do you think that is proper and right, that if you're halfway through an official amendment that the minister can refer and it's done?

**Ms Predko:** Mr McLean, I have to apologize, but I can only speak on behalf of the legal department. I would really—a matter like that would have to come from our director of planning. I can't speak on that matter.

**Mr McLean:** I have no further questions.

**Mr Villeneuve:** Thank you very much for your presentation. Private legislation as it affects London and may well affect Hamilton and Ottawa in the near future, are you familiar with that?

**Ms Predko:** Yes, I am.

**Mr Villeneuve:** Could you just expand on that a little bit?

**Ms Predko:** The city of London has applied for and been granted private legislation to allow it basically to do what is done in this proposed amendment. What they say now in their bylaws is that fine revenue collected under this bylaw is not affected by the Fines and Forfeitures Act, is not affected by the Administration of Justice Act, and is payable to the treasurer of the municipality. It's a very short piece of special legislation that basically allows them to have this amendment within their municipality.

**Mr Villeneuve:** This is legislation that was brought through Queen's Park via private member, private legislation?

**Mr Grandmaître:** I brought the Ottawa private member's bill.

**Mr Eddy:** And spoke very eloquently to it, I must say.

**Ms Predko:** Yes, they're all private pieces of legislation.

**Mr Villeneuve:** How do you qualify as a city? Would Peterborough qualify for this private legislation?

**Ms Predko:** Yes, we would.

**Mr Eddy:** Costs money.

**Ms Predko:** But it costs money. If it's the answer, if it's not something that the government's opposed to for any given municipality, then our position is that it should be given to all municipalities equally. Yes, the city of Peterborough is in a position where we could bring private legislation, and I've done research on that matter. If this is unsuccessful, we may very well do that. But that doesn't deal with smaller municipalities which are smaller than ourselves. We're probably about the cutoff point in terms of it being worth your while financially.

**The Chair:** Mr Hayes, do you want to make some comments to clarify?

**Mr Hayes:** It's correct that there have been other municipalities that have come to regs and private bills. This ministry has not objected to them getting their private bills dealing with fines for example. We certainly will consider this, because I think it really does give the municipalities some incentive to really enforce their bylaws, and at the same time possibly some revenue to the municipalities. So we are certainly looking at addressing your concern in your presentation.

**Ms Predko:** If I could just comment to that, the situation we're in presently actually provides a disincentive. Most municipalities do want to enforce their bylaws but it's a very costly endeavour, and when you have a situation with limited resources, if you're getting nothing back and spending money out, there comes a point where people go, "No, we can't afford to do this."

**The Chair:** Any questions from the government members?

**Mr Wiseman:** I did have a question.

**Mr Grandmaître:** Sorry to wake you up.

**Mr Wiseman:** I'm awake, believe me.

I guess the question would be, can we open up this section of the bill if we were to try to do this? It's section 67 of the Planning Act. I think that's where it would be.

**Ms Predko:** Yes, it is 67. I've provided most of 67 there. That's all of 67, and what you're looking at is putting something on to the end of 67 as it stands.

**Mr Wiseman:** It's a technical question, whether it could be opened or not, and I haven't heard an answer yet.

**The Chair:** Mr Melville, is it?

**Mr Melville:** Yes, it's Mr Melville. I'm not sure I should speak here, because this is properly a legislative counsel issue in terms of the procedure for opening up sections of bills.

**Mr Eddy:** Can we refer it to them and get an answer?

**Mr Melville:** Yes. I think we can certainly speak to legislative counsel about this issue.

**The Chair:** Do you want to comment on that?

**Clerk of the Committee (Ms Donna Bryce):** I was just going to say legislative counsel doesn't make that determination, it would be the clerk, and without seeing the amendment, you can't really rule hypothetically. However, as a general rule, if the bill already speaks to that issue or if it's opened in one of the acts which the bill is amending, then it is in order.

**The Chair:** Thank you, Ms Bryce. Mr Eddy.

**Mr Eddy:** Third call. Thank you very much. I'll go this time.

Thank you very much for your concise and important presentation. I agree with you completely. That's the way it should be done and there will be an amendment, I assure you, presented to this effect. Now, it may be a government amendment, and of course when the amendment is presented, it may be ruled out of order by legislative counsel, but certainly we'll try, because I agree with you completely, it's time it was done.



There are a lot of other matters that have come forward as private legislation for an individual municipality that we should face up to and change the act to include, but this is certainly very important. I agree, when you start getting some municipalities that have it and others that don't, then if it's passed, it's an admission by the government that it is in fact okay and should proceed. And we should follow it up with general legislation, otherwise you're putting some at a disadvantage to other municipalities and that's not fair nor equal. So we need to get on with it and I'm pleased you brought it up. I've supported the applications from those three cities because I sit on that committee, but it is a cost and it is time-consuming, so let's look at that. Good point.

**Mr Grandmaître:** One short question, Mr Chair. Did you get an answer from your May 11 letter?

**Ms Predko:** Yes, we did.

**Mr Grandmaître:** What was the reply?

**Ms Predko:** Would you like me to read the reply?

**Mr Grandmaître:** Please. Was it favourable?

**Ms Predko:** No.

**Mr Grandmaître:** Read it.

**Ms Predko:** "July 11, 1994.

"Dear Mr Hart:

"Thank you for your letter of May 11, 1994, requesting consideration of an amendment to section 67 of the Planning Act to empower municipalities to collect fines for contraventions under the act.

"Currently the fines collected go to the consolidated revenue fund. As you know, Bill 163, the planning reform legislation, was introduced for first reading on May 18, 1994, and received second reading on June 21, 1994. The collection of fines by municipalities is not in this package. However, my ministry is reviewing this issue further.

"I thank you for bringing your concerns to my attention.

"Sincerely,

"Ed Philip, Minister."

1140

**Mr Grandmaître:** So one more question: Where's the review at? The minister has said it's being reviewed. Is it being reviewed?

**Ms Dewar:** We have done some further work on the amount of money, for example, that is affected here and we have looked into the possibility of including it. It wasn't included in the bill when the bill went for second reading.

**Mr Eddy:** It wasn't?

**Ms Dewar:** No, it was not.

**Mr Grandmaître:** So is there a possibility that the ministry, or I should say, the minister, will amend the bill?

**Mr Hayes:** Just to reaffirm what I said earlier, Mr Grandmaître, there is that possibility, yes.

**Mr Grandmaître:** That's a possibility.

**Mr Eddy:** We'll follow it up.

**Mr Curling:** It's a matter of we have a lot of time here and—

**The Chair:** Yes, we do. On the other hand—

**Mr Curling:** —what are our opportunities to speak to you on this matter?

**The Chair:** Briefly, Mr Curling.

**Mr Curling:** Was this matter raised before the bill was introduced at second reading? I just want to get the dates right.

**Mr Grandmaître:** May 11.

**Mr Curling:** May 11.

**Ms Predko:** You would have to inform me of the date of second reading.

**Mr Curling:** And the legislation was May 14, and the—

*Interjections.*

**Mr Curling:** This is important.

**Mr Wiseman:** First reading, May 18.

**The Chair:** Go ahead, Mr Curling.

**Mr Curling:** So the letter was presented to the minister before the legislation was presented.

*Interjections.*

**Mr Curling:** Let me ask the question.

**The Chair:** Mr Curling, please, we've gone beyond our time. Place your question.

**Mr Curling:** The minister said it's under review, so he had no intention, it seems to me, to include it in the legislation.

**Mr Wiseman:** That's not fair.

**Mr Curling:** Therefore, I would presume I'm hearing now that it's still under review; he has not done anything about it. It seems to me then that there would be no review going to be done on this, because he had the opportunity to put it in the legislation and he said it's still under review after second reading.

**The Chair:** Mr Curling, are you soliciting a response to your statement or are you making a statement? Make the statement then.

**Mr Curling:** Mr Chairman, I've been interrupted from the government, from you—

**The Chair:** It's just, Mr Curling, that we've gone way beyond our time in terms of questions, so all I'm asking you to do is please make the statement or place the question.

**Mr Hayes:** Make your political statement.

**The Chair:** Go ahead.

**Mr Curling:** I don't intend to be dictated to about if it's a question or a statement, you know that.

You said it was not favourable, itself. Do you feel that there would be a response now, now that the minister has an opportunity before the legislation was placed before the House, and also now that there really is no real response to this statement?

**Ms Predko:** Quite frankly, sir, that is why I'm before this committee, to bring it to your attention as well. We are not so naïve in our office that we think we send one

letter and we get changes to legislation. We're following every route we can. We're also working with the court office in Peterborough to point out to it that other court offices are receiving a fine revenue. We're doing all we can. No, I don't think a letter's going to do it, but I think that's a political reality.

**Mr Curling:** Yes. Well, I appreciate your persistence in continuing to do so. Thank you.

**The Chair:** Ms Predko, we appreciate you coming. Thank you for your brief. People have heard your concerns.

*The committee recessed from 1146 to 1333.*

FEDERATION OF ONTARIO  
COTTAGERS' ASSOCIATIONS

**The Chair:** We're ready for the Federation of Ontario Cottagers' Association, Mr Ambrose Moran.

**Mr Ambrose Moran:** Mr Chairman and members of the committee, I'd like to thank you for providing the opportunity for me to address you today. My name is Ambrose Moran and this presentation is on behalf of the Federation of Ontario Cottagers' Association, often known and referred to as FOCA.

I'd like to preface my comments by explaining that FOCA is an umbrella organization of cottage associations and individual members throughout Ontario in areas such as the Kawarthas, Georgian Bay, Muskoka, Haliburton, eastern Ontario and the Lake of the Woods area. Approximately 50,000 cottagers belong to FOCA through 500 cottage associations, along with approximately 800 individual members.

FOCA has a land use planning committee, and I am the current chair of that committee.

We would like to take this opportunity to commend the government for undertaking this major review of the planning process, and feel that the Commission on Planning and Development Reform in Ontario has contributed greatly to raising general public awareness of the planning process. FOCA has actively participated in the extensive consultations undertaken by the Sewell commission, and we were very satisfied with most of the final recommendations, including the proposed policy statements.

Bill 163 has, in many areas, supported the findings of the Sewell commission, while at the same time has fallen short of dealing with certain recommendations in which FOCA has a particular interest.

I will share with the committee today four concerns which we have regarding Bill 163. The first one is regarding notices.

From the outset of the review of the planning reform, FOCA has recognized that what was most important to our members to effectively participate in the planning process was to have a means of knowing what planning decisions are being made in cottage country. It is fundamental to a fair planning process that those affected by planning and development decisions have the benefit of effective notice provisions.

Currently, many significant planning decisions are made which impact on lakefront neighbourhoods without those directly affected having the opportunity to provide

input. Often, statutory notice requirements are satisfied by limited circulation and possibly a notice of the public meeting in a local newspaper or posted at the general store. Lakefront property owners are often seasonal residents and not aware of public meetings dealing with important planning matters such as rezoning, official plan amendments, severances and variances which are being considered by our councils.

We encourage our member associations to get involved with planning matters and to form partnerships with their elected councils to assist them in the often very difficult and sensitive matters of waterfront development.

It has been recognized by many that in order for the planning process to be effective, those directly affected must have an opportunity to provide input in the early stages in order that conflicts can be resolved and expensive and time-consuming OMB hearings can be avoided.

As the Sewell commission work was developing, FOCA realized and worked hard, as did other groups, to encourage a change to the planning process to establish an effective method of notification of planning applications. We were very satisfied that Sewell commission recommendation 76 stated:

"To encourage public participation in the planning process through better notification, the Planning Act be amended so that:

"(b) municipalities be required to maintain a registry of those requesting notification of planning matters in the municipality or part of the municipality. A nominal fee may be charged for the service."

In communications with our member associations we have on several occasions indicated that, setting aside all the other 97 recommendations, the recommendation which we felt would most effectively ensure fair participation in the planning process was the proposal that we would, as a matter of process, have the right to be notified of development applications through this registry system.

We submit that the use of the registry system would be consistent with the purpose of the act, 1.1(d), stating "to provide for planning processes that are fair" by making them open and accessible.

The number two item I'd like to deal with is the matter of dismissal of referrals to the OMB if no oral or written submission is made. Apart from Bill 163 as presently written not providing for the recommended registry system, cottagers, when not aware of the fact that a development application is being considered by council, may lose their traditional rights to refer the matter to the OMB if they do not make an oral or written submission prior to council making their decision.

We recognize the obligation for affected ratepayers to express any valid concerns to council to assist them in making their planning decisions. We do not support a system of losing referral rights based on not making an oral or written submission prior to council making a decision when, as so often is the case for seasonal residents, we are not aware of the fact that the matter is being considered by our council.

The registry system as per Sewell recommendation



76(b) would provide an effective notification system. When an effective notification system is in effect, then the obligation to participate and the risk of losing rights for not making submissions may have merit.

The third item I'd like to deal with is the matter of minor variance appeals. Bill 163 as written amends the Planning Act so that council decisions on minor variances are final and that traditional rights to appeal decisions to the OMB are taken away. This proposed amendment is apparently intended to streamline the planning process but, if implemented, would be at the expense of property rights and prove to be a serious flaw in the planning process.

Justification for this appears to rely too heavily on the word "minor," which has never been defined, and some questionable claim that the minor variance appeals take up a large portion of OMB time.

The very fact that concerns are being raised that the OMB is spending too much time on minor variance appeals could be evidence that the current minor variance system is being abused, and this could be further aggravated if councils act without the risk of being challenged to the OMB.

Although examples of minor variances have been provided which include a lot size being reduced by a square foot, it is our experience that in rural Ontario major relief from zoning provisions are routinely provided through committees of adjustment. Little difference exists between rezoning and minor variances, and the proponent usually decides which application to pursue based on which is quicker and less expensive.

Another illustration of the interchangeability of variances and rezoning is the practice of land division committees approving consents subject to the applicant satisfying a condition that either a zoning amendment or a minor variance be obtained.

#### 1340

We see the following problems with the elimination of the rights to appeal to the OMB on minor variances:

—Abuse of the variance process could result as certain councils would enjoy the final approval authority.

—When developers recognize influence by active ratepayers over elective councils, developers will likely make applications for rezoning rather than minor variance in order to provide for an eventual appeal to the OMB rather than to have to accept a political decision from council.

—Where land division committees approve a severance subject to a minor variance to recognize a deficient zone provision, an appeal to the OMB of the severance could result in a situation where the OMB may grant the severance and subsequently the local council could effectively overrule the OMB by not granting the variance.

—Ratepayers disagreeing with and frustrated by a council's decision on minor variances will possibly complain to the Minister of Municipal Affairs, the news media and the local member of Parliament as they do not have the traditional rights to the OMB. Traditionally, provincial politicians did not have to get too involved in

planning matters as constituents have appeal rights to an independent appeal body.

—A serious matter of fairness can arise when a developer's application is denied at council and then the developer immediately applies for rezoning for the same bylaw relief. This would provide an opportunity to eventually have an OMB appeal right, whereas a ratepayer objecting to a variance application has no further steps to take after the council makes a decision. Clause 1.1(d), one of the purposes of the act, is to provide a fair planning process. We firmly oppose the removal of the appeal rights for minor variances.

The fourth item I'd like to deal with is the matter of septic. The Sewell commission raised valid concerns about the serious state of existing septic throughout Ontario and made recommendations that private septic be inspected regularly and that a fee be charged for these inspections and that this fee would be collected with property taxes on a user-pay basis. FOCA has supported this approach and it is disappointing that Bill 163 has not addressed this important part of the Sewell Commission work.

Reinspection of septic is an inexpensive, cost-effective way of providing environmental protection while at the same time providing significant economic development activity throughout rural Ontario. The large percentage of malfunctioning septic around lakes presents a far more serious threat to water quality than new developments, which would be subject to strict environmental controls.

Although it appears that a decision has been made not to address the septic recommendations of the Sewell commission within Bill 163, we and many others support the recommendations and urge the government to support implementation of a program of regular reinspections of septic.

In summary, FOCA feels that our concerns are not extensive and are reasonable and can be addressed by providing a fair planning process by (a) providing for the registry system as proposed in Sewell commission recommendation 76, and (b), continuing the rights to appeal minor variance decisions to the OMB.

It is likely it will be some time before we again have the opportunity to improve the planning process in Ontario and we ask this committee to support our requested changes.

**The Chair:** We'll begin with the official opposition.

**Mr Grandmaître:** Are you familiar with Reverend Mark Stagg? Is he with you?

**Mr Moran:** I just read his submission at lunchtime on the chair there.

**Mr Grandmaître:** Wasn't he your representative on the cottage committee?

**Mr Moran:** No, during the work of the Sewell commission, there was a cottagers' working group committee and our past president was representing FOCA on that working committee.

**Mr Grandmaître:** So you've never shared your concern with Rev Stagg?

**Mr Moran:** No.

**Mr Grandmaître:** And yet he was supposed to be your representative. What input did you have?

**Mr Moran:** We have 500 member associations, but I chair the land use planning committee of FOCA. We certainly encourage other member associations to make submissions and develop their positions and take an interest in the matter.

**Mr Grandmaître:** So you had ample time to tell the commission of your concerns, especially on the septic.

**Mr Moran:** Yes. We made significant submissions and supported the reinspection program, and we also supported that it be done on a user-pay basis.

**Mr Grandmaître:** And the Sewell commission accepted your recommendations.

**Mr Moran:** We were satisfied with the recommendations of the Sewell commission in its final report, yes.

**Mr Grandmaître:** But the government left it out.

**Mr Moran:** Yes.

**Mr Grandmaître:** Is it possible, Mr Chair, to ask the parliamentary assistant why it was left out? I think it's fair.

**Mr McLean:** Good question. It doesn't matter whether it's fair or not.

**Mr Hayes:** I don't think it's a case of just ignoring the recommendation, because it does fall under the Ministry of Environment and Energy. I know that they are having discussions probably dealing with this issue and I think that's probably the appropriate place for it to be.

**Mr Grandmaître:** But, Mr Parliamentary Assistant, I thought Municipal Affairs was the lead ministry in this bill.

**Mr Hayes:** Yes.

**Mr Grandmaître:** If you are the lead ministry—

**Mr Hayes:** Certainly we are, but I don't—

**Mr Grandmaître:** Well, you are. This is what I'm told. You are the lead ministry, right?

**Mr Hayes:** We are the lead ministry in this piece of legislation, and there are certain recommendations—

**Mr Grandmaître:** Did your ministry—

**Mr Hayes:** If you want to hear me out, Mr Grandmaître, there are certain pieces of legislation that fall under the jurisdiction of other ministries. We certainly want that other ministry to take a look at this situation, because that certainly is its jurisdiction.

**Mr Grandmaître:** Did you meet with the ministry to, let's say, fight or promote or assist or support the cottagers on their recommendations?

**Mr Hayes:** Have I personally?

**Mr Grandmaître:** The minister. No, not you, but the minister.

**Mr Hayes:** I don't know if one of the staff wants to address that. Are there, I guess, discussions going on at the present time—

**Mr Grandmaître:** They're ongoing.

**Mr Hayes:** —on these particular issues?

**Ms Dewar:** There have been and there are bits of

discussions going under way with the Ministry of Environment about this issue.

**Mr Grandmaître:** And what's the feeling of MOEE on this one?

**Ms Dewar:** I haven't been involved in those discussions.

**Mr Grandmaître:** So we don't know if this will be one of your amendments or not.

**Mr Hayes:** No, we don't know that.

**The Chair:** Okay. Anything further?

**Mr Eddy:** I can see that you consider the matter of the registry very important, as many other people do, other than cottagers too, because there are a great many people who have properties in municipalities and don't live there for various reasons. So I can see the importance of it. What system do you follow now? It's always in the newspapers, so you watch the newspaper and then circulate that to your members and hope you don't miss one? So it's a hit-and-miss type of thing?

**Mr Moran:** It's very informal at the moment, and when the original thoughts were coming out about developing a registry, we used that approach. In my own municipality, we approached our municipality and asked if it would set up a registry for us as the cottage groups for that township, and they now, as a matter of course, do circulate to our own cottage associations in that township.

**Mr Eddy:** You said the association, so it's the officers of the association?

**Mr Moran:** Yes.

**Mr Eddy:** And you would be content with that in future rather than every member—

**Mr Moran:** Yes. I think from the point of view of paper flow and monitoring a particular area or a part of a township, it makes some sense that an identifiable interest group be part of the registry rather than individual people.

**Mr Eddy:** I think that's a good point and I appreciate the fact that you're willing to—

**Mr Moran:** I've had discussions with the staff of the municipality as to whether it's a difficulty for them and they said they circulate widely all of these applications. So it's whether they press the button for 14 copies or 15, and they've related back to me that it was not a difficulty for them administratively.

**Mr Grandmaître:** Why would there be a fee then for them to register?

**Mr Moran:** It says that there may be a fee, and I think that's a decision of local councils, whether they want to offer that service to their ratepayers' groups or identified ratepayers. But it said that there may be a fee.

1350

**Mr McLean:** Just briefly, the three specific areas that you zero in on: I don't think there should be a big problem with at least two of them, with the registry system and with the rights to appeal the minor variance decisions to the OMB. Indications that we've had are that it's only 6% of the appeals that go to the OMB anyway so it shouldn't be a big job if they want to maintain that.



The other area is septic systems, that Sewell had recommended. I had some problems with making it a blanket coverage across the province but I live in an area where I know there are real problems with the septic systems on the waterfronts, on a lot of our waterways. What recommendation could we have that would try and solve that with regard to the septic systems without covering the whole of Ontario?

**Mr Moran:** We are, in FOCA, participating with the Ministry of Environment in some discussions about a cost-effective expanded cottage pollution control survey from which, incidentally, there's been support withdrawn last October. The program that we were having some benefit of, which was not very extensive—as a matter of fact, in Peterborough county, there's only been one lake checked since 1980 and it happens to be my lake. Put a lid on it.

**Mr Grandmaitre:** Lucky you.

**Mr Moran:** But anyway, it's done, and the reports in the paper at the time said that 70% of the cottage septic failed that survey. When I talk about a cost-effective system, in that survey system, if you put a septic in a year ago, that survey would have come back and asked you a lot of questions about your system. I've made a proposal on behalf of FOCA for a cost-effective one where we share information between the assessment office, the building department and the Ministry of Environment, all of whom have data on my property and shouldn't be sending somebody out to every property.

I think the way to do accomplish it is have an expiry date on your certificate of use. If your certificate of use expires every 10 years, then you would only be dealing with expired certificates of use and it would be much more cost-effective.

So we are working with the Ministry of Environment towards promoting that and we're going to continue to take that as an issue with FOCA because we feel that the existing systems are a far greater threat to the environment than the new ones that are proposed.

**Mr McLean:** Are they accepting that? Not really. Thank you. Mr Villeneuve, do you have—

**Mr Villeneuve:** FOCA has got to be a fairly powerful group. Do you notice some degree of reluctance from the local people who live in your area 12 months versus the people who belong to FOCA? Have you been able to work with the local people reasonably well? We've heard some submissions here that there is a great deal of friction at times.

**Mr Moran:** Something I'm very concerned about is the integration of the seasonal and the permanent residents in a community. There's examples in this area where cottage associations, through frustration, actually took over the elected positions. I think that they may have had reason or may not have had reason, but it's caused a lot of sensitivity and the people are very worried about the extension of that approach.

In my view, in my municipality, I felt that we should be plugged in at the committee level, the planning advisory committees, the committees of adjustment, recreational committees, and help the elected councils do

their work, which is a difficult job and getting more difficult all the time. I think there's some expertise in the seasonal community which could contribute to that.

So I'm very aware of that thing. I frankly think that a cottage association taking over a municipal elected council probably wouldn't have any volunteer firemen a week later. I don't think that's the right thing. I think you've got to be very, very sensitive to your influence as a seasonal resident and we're very conscious of it.

We encourage our members to vote; we encourage them, if they are available, to participate in the election process in terms of maybe being a member of council. We don't campaign to take over a municipality and I don't support that.

**Mr Villeneuve:** The appealing of minor variances, can you not see that becoming very, at times, frivolous and vexatious?

**Mr Moran:** I think that should be sorted out but I can tell you that I'm on a committee of adjustment. I watch what's happening. I read in the paper a week ago, in this county, where a minor variance was approved; it relaxed the setback from 40 feet to zero. I looked up the minutes again last night to confirm that the land division committees give approvals subject to either a minor variance or a rezoning approval. They don't differentiate between it.

I think that there's a real risk right now of people applying for minor variances, getting it approved contrary to zoning, contrary to the official plan and contrary to every provincial policy statement that would allow construction on wetlands, and nobody could do anything about it. I think it's a huge defect in the system.

**Ms Jenny Carter (Peterborough):** I originally had three questions, and they've all been touched on, but never mind.

Thank you for a very sensible and friendly presentation with several very valid points. You've got me really scared, because on page 4 you say that local MPPs are liable to get involved in planning decisions because of the absence of appeals to the OMB. You elaborate on that topic quite a bit. I'm just wondering if we could have a response from the ministry as to how it envisages the situation developing in the absence of those minor variance deals.

**Ms Boeckner:** The intent of Bill 163 is that local councils would make the final decision on minor variances without an appeal. However, it does set up an appeal route that councils could take whereby they would set up a committee of adjustment of appointed individuals. The committee would make a decision, and that decision could be reviewed by the town council. That would be the only appeal route or second route allowed by Bill 163 for minor variances.

**Ms Carter:** Of course I haven't been sitting on this committee and I'm sure you must have gone over this many times, but I suspect that there is some work to be done on this still. We did discuss the septic tanks, but again I think that's a very valid and compelling issue and that we do have to make sure that all those older septic systems are functioning well, whatever the mechanism for doing that.

I also appreciate your assurance that your cottagers' association wishes to work with local councils but not to take them over, because we really heard a very astonishing report about that in one township this morning.

**Mr Paul R. Johnson (Prince Edward-Lennox-South Hastings):** I'll speak very quickly. Thank you, Mr Moran, for being before us today. I'm from Prince Edward-Lennox-South Hastings; the Bay of Quinte, Sandbanks Provincial Park, North Beach Provincial Park, they lie within my riding. Down in that area they're administered by conservation authorities. We have what's called a CURB program—you may be familiar with that—Clean Up Rural Beaches; very successful, deals with septic tanks. I don't want to dwell on the septic tanks, but if you come from cottage country or if you come from rural Ontario, they're a fact of life. This program's been very successful.

A couple of years ago in the Legislature I brought in a private member's resolution that was supported by the majority of members in private members' public business on that day, that suggested that before people sell their residences they have their septic tanks inspected so that the new buyer wouldn't find a problem, a surprise, after they purchased their new property. The expense of course would be borne by the owner-seller.

Because I only have two minutes I can't go into the detail I'd like to, but would FOCA be agreeable to supporting that kind of resolution should it be made into a bill where at least on those occasions when people sold their residences and cottages there was an opportunity by legislation to inspect their septic systems?

**Mr Moran:** FOCA's on record supporting that approach. On the same basis that you can't sell your car without making it mechanically fit, your property should be environmentally fit before you transfer ownership. We do support that approach.

**Mr Paul Johnson:** Great.

**The Chair:** Mr Hayes, did you have a comment to make?

**Mr Hayes:** Yes, just in regard to the registry. That part is being dealt with right now under the implementation task force. It will be prescribed by regulations to deal with the notices. It's likely that the regulations will provide for persons who have—like yourself—their own association and who have requested to be notified. That is really being dealt with by the implementation task force.

The other point of clarification I'd like to make is, and we talk about minor variances—it's been mentioned that only 6% of OMB cases are minor variances. That's really not correct. It's 6% of the time spent on them, but 18% of the cases are dealing with minor variances. Just to let you know.

1400

#### ECO-COUNCIL OF THE PETERBOROUGH AREA

**The Chair:** We have the Eco-Council of the Peterborough Area, Ms Jean Greig. Welcome to this committee.

**Ms Jean Greig:** Thank you and good afternoon to members of the committee and to the Chair. My name is

Jean Greig. I'm here representing the Eco-Council of the Peterborough Area, and I'd like to say first of all that I really appreciate the opportunity to speak to the committee, and particularly that the committee has taken the time to travel to Peterborough and to other communities, because this really facilitates the ability of citizens' groups like ours to participate in this public hearing process. I appreciate that greatly.

To start, the Eco-Council is a citizens' environmental group of individuals and groups from not only the city of Peterborough but from the surrounding area and surrounding municipalities, including Lakefield, Norwood, Millbrook and the Kawartha lakes, and we have been active on a number of issues in this community for about the past five years. Land use planning issues have been a particular focus of ours. We've participated in several local processes, including commenting on our county plan.

We are currently involved in two processes within the city of Peterborough in partnership with the city planning department and other community agencies. One is the development of a natural area strategy for the city, the outcome of which will be used to help the revisions of the open space portion of our city's official plan, and the second is participation in a review of the section of the official plan that deals with transportation issues. So we're keenly interested in local planning issues.

We've also been quite extensively involved in this ongoing process to revise the planning process in Ontario. We made several submissions to the Sewell commission as it was going through its consultation. We looked at and commented on the comprehensive set of policy statements and we currently have a representative sitting on the implementation task force, which I believe is meeting today in Toronto to discuss regulations and guidelines to put some of the stuff into action. We are, of course, very happy to be here to talk specifically about the issue of Bill 163.

As I stated in the front-page summary of our presentation that's been handed around to you, we've generally been very pleased with the outcome of the Sewell commission and with the comprehensive set of policy statements. We felt that these represented some very positive and necessary steps forward to restoring both environmental and process integrity to the planning process in the province.

Bill 163 embodies many of these positive steps, but we also feel that there are some critical shortcomings that need to be addressed if this bill is to achieve the purposes that it set out to do, injecting necessary environmental and process integrity into planning in Ontario. So I have comments on five specific areas that are our main areas of concern with Bill 163.

The first has to do with the "shall be consistent with" clause. The recommendation of the Sewell commission was that the Ministry of Municipal Affairs, other ministries, planning authorities etc make decisions that are consistent with the policy statement set out in the Planning Act, and this was a really important principle. Part of the whole thrust of this was to establish a much stronger policy direction from the province and establish



the framework within which municipalities and local planning authorities could make planning decisions that would uphold provincial interests.

We were very, very disappointed to find in Bill 163 that this requirement for consistency with policy statements has now only been extended to the Ministry of Municipal Affairs and it appears that the other ministries are not covered by this requirement.

Part of our dismay, I suppose, is because we don't really know where this came from. It wasn't anything that came up during the course of the Sewell commission. We haven't heard about why this has happened. We don't know what its implications are. Does this mean that the Ministry of Natural Resources, for example, in commenting on an official plan, doesn't have to be consistent with the policy statements? What does it mean? What is the implication of this? Maybe somebody can address that, but we're very disappointed that the other ministries have not been included in the "shall be consistent with" clause.

Likewise, the statement in subsection 62(1) that Ontario Hydro shall have regard to policy statements, again seems to us to be a step backward. Why should Ontario Hydro only have to have regard to the policy statements when a municipality, for example, has to be consistent with them? Why is there this difference in status there? Indeed, by having that clause applying to Ontario Hydro and no clause applying to any of the other provincial ministries, it really appears that there's a three-tiered set of requirements here: that the municipalities and the Ministry of Municipal Affairs must be consistent with policy statements, Ontario Hydro must have regard to, and everybody else really doesn't have to worry about them at all. That's how it reads to us. Now, I may be convinced differently, but that's how it reads, and we feel that's very, very dangerous and is a big step backwards from the recommendations of the Sewell commission.

We would like to recommend that part III, subsection 6(2) of Bill 163 be amended to read: "Subsection 3(5) of the act is repealed and the following substituted:

"(5) A decision of the council of a municipality, local board, planning board, the minister and the Municipal Board under this act and any other act as may be prescribed, and a decision by every ministry of the crown and Ontario Hydro affecting land use matters under this act, shall be consistent with policy statements issued under subsection (1)."

That is our first recommendation.

Our second concern has to do with pre-approval site alteration. As a local grass-roots environmental organization, one of the concerns that comes up over and over again, not only in our community but in other communities, is the fact that currently, in many municipalities at least, just about anything can be done to a chunk of land before it actually goes through the approvals process, and if this is a sensitive environmental feature, it can be damaged or destroyed before there's even any possibility of protection.

We feel that the proposed amendments to the Municipal Act that are part of this bill really do not go far

enough to ensure that damage to those features and functions does not occur prior to obtaining the development approvals.

As it's stated, the bill gives municipalities the option of passing bylaws that would restrict pre-approval site alteration. Certainly, some municipalities are not going to pass these bylaws, and where those bylaws are not in existence, there is no recourse, and even a citizen or a group or whoever who may want to take some action to stop what's going on has no legal recourse. We feel that's unacceptable.

A second concern about this section of the bill is that those site alteration activities that are discussed in this section should be expanded. At the present time, they talk about grading and the dumping and removing of fill, but it should also be expanded to include cutting or clearing of vegetation and removal of peat, because these are two other activities that can and often do have a significant effect on the integrity of a piece of land before a site approval is given.

#### 1410

Our first recommendation or our preferred recommendation would be that part VII of the Planning Act be amended by adding a section that would prohibit site alteration by an applicant prior to the issuance of any necessary approvals under this act, prohibit any site alteration that does not comply with any terms and conditions attached to any approval issued under this act or any other act, and provide citizens with the ability to apply to the courts for injunctive relief where an authorized site alteration is taking place. That would be our preference.

In the alternative, we would recommend that the first line of part IV, section 2 of Bill 163, where municipalities are given the option where they may pass bylaws concerning these matters, be amended to read that "the council of a local municipality shall pass bylaws concerning the issues that follow," the various site alteration activities, and furthermore, we would recommend that the words "the cutting or clearing of vegetation and the removal of peat" be added in the appropriate places to the subsections under this part of Bill 163 that defines the types of site alterations included in this section of the Municipal Act.

Our third concern with Bill 163 has to do with grounds for dismissal of appeals. We have two main concerns about this portion of the act. There's a phrase that appears several times through this portion of the act that deals with refusal to refer or dismissal of appeals, the phrase "apparent land use planning ground." This is a phrase that is not defined in this act, and it raises the question in our mind, what is a valid land use planning ground and who is going to state what this is? Who is going to interpret this and how is it going to be interpreted? How indeed does it differ from the frivolous-and-vexatious clause that has been more or less defined, and why are there these two different sets of grounds for dismissal? We don't feel that it is acceptable that this phrase remain in the bill, at least in an undefined form, because it just leaves too much room in how those words will be interpreted or applied.

Secondly, we feel that the ability to dismiss appeals or referrals on the grounds that oral or written submissions were not prior to council giving approval is, again, not acceptable. It's not sensitive to the reality that most citizens' groups have to deal with, which is that they're mostly volunteers. They're working in their spare time. They don't have, necessarily, any very consistent or fast method of getting word around. It takes time and a lot of effort with usually no professional help to go through the information and assess what its implications are and prepare a response. That a valid appeal or referral be rejected simply on the grounds that an oral or written submission was not made prior to the approval, I think, is an infringement of democratic rights, and we feel that Bill 163 should be amended to remove these clauses.

So our recommendation on this section is that in part II of Bill 163 referring to grounds for dismissal, delete the subsections referring to apparent land use planning grounds or that the term "land use planning ground" be replaced by the phrase "land use planning ground as provided in sections 1.1 and 2 of this act and as described in the planning policy statements under section 3," and that would define that land use planning ground in reference to something that's already been more or less defined.

Secondly, that those subsections of these portions of the act that refer to the limitation of making oral or written submissions before an appeal or a referral is valid be deleted altogether from the bill.

The last two issues are more or less omissions from the bill, we feel. The first has to do with joint planning. There is a range of planning issues which extend beyond the boundaries of individual municipalities, and these could include watershed planning, integration with protected areas under the control of other jurisdictions, transportation planning, growth and settlement patterns and population projections. In order to plan effectively and in a useful way for these types of issues, it is really important that municipalities consult with the surrounding municipalities in developing their plans.

Peterborough is actually a great example of that, because of course in many areas there are already regional governments that help this to happen; there are upper-tier plans that help this to happen. But the Peterborough example is one which illustrates why there needs to be a requirement for joint planning. We have a city of Peterborough inside the county of Peterborough, which is a separate planning jurisdiction, and ideally planning would occur in a joint manner between the county and the city. There is some resistance to this happening, and if it doesn't happen, it means that those issues which are of joint concern and that really extend past those boundaries are not getting dealt with in the most effective manner.

We feel that there should be a requirement within the prescribed process for planning that municipalities consult with all neighbouring jurisdictions on shared planning concerns, and we recommend that this legislative committee formally request that cabinet ensure that the prescribed process for plan preparation, including plan review and amendment, requires that municipalities

consult with all neighbouring municipalities and jurisdictions to ensure that their plans are logically integrated and will not conflict with or otherwise unreasonably interfere with the plans of neighbouring jurisdictions.

Finally, deadlines for revisions of plans: We haven't been able to find anywhere in Bill 163 a requirement or a time line for municipalities to bring their plans into consistency with and into line with the new policy statements. As you probably well know, it sometimes takes an awfully long time for some municipalities to get around to reviewing and updating their official plan. It could be years from the time that this bill is passed—many years in some cases—before a municipality actually brought its plan into line with the intent of this bill and the new act if there is not a requirement that this be done and a time line that it should be done within.

Our recommendation is that Bill 163 be amended to add a new subsection (4) to section 26 of the Planning Act—this is where it would sit—which would state, legal talk:

"Despite subsections (1) and (3), when the province issues new policy statements under section 3, the council of every municipality that has adopted and approved an official plan shall, without undue delay, undertake a review of its plan to ensure that the plan is consistent with policy statements issued under section 3 and each municipality that is the approval authority in respect of the approval of an official plan of a local municipality within its jurisdiction shall submit to the minister a revised official plan no later than three years of the issuing of new section 3 policy statements and ensure thereafter, and within no more than two years, that a review of any official plan of a local municipality is undertaken to ensure that the plan is consistent with the revised plan of the approval authority."

That would be our recommendation on that issue.

These are our main concerns with the act. There are some others that we will be addressing in a joint statement that will come from the land use caucus of the Ontario Environment Network, but from the point of view of the Eco-Council, these are the key issues for us in Bill 163. We think that if these issues are addressed, we will have a much stronger bill and one which goes much further towards achieving the goals and the objectives that were the basis of this entire review of the planning process in Ontario.

1420

**Mr McLean:** My questions will be short. Welcome to the committee. The question I have, and maybe its looking for a clarification is with regard to "Decisions consistent with policy statements.... We were dismayed to find in Bill 163 that all provincial ministries but the Ministry of Municipal Affairs have been excluded from that requirement. It is unclear to us why this change was made, and we are nervous of its implications."

With regard to "the revision of subsection 62 of the act to state that Ontario Hydro 'shall have regard to,'" would you explain that a little more clearly for me? I think what you're looking for is that all ministries should have the same—



**Mr Grandmaître:** All agencies and boards.

**Ms Greig:** That's exactly right. All ministries, all agencies, all parties shall act in consistency with those policy statements. We see that that's why those policy statements are there, to provide that direction. If decisions don't have to be consistent with them, then there's not a whole lot of point in having them there.

**Mr McLean:** At the bottom of that same page: "We recommend that part VII of the Planning Act be amended by adding a section that would prohibit site alteration by an applicant prior to the issuance of any necessary approvals under this act." Can they do it now without going through the necessary approvals?

**Ms Greig:** Oh, site alteration, certainly. My understanding is that where there are not specific municipal bylaws limiting things like the cutting of trees, removal of vegetation etc, many types of site alterations, there's absolutely no legal limitation on what gets done.

**Mr Wiseman:** AMO has suggested with respect to the phrase "shall be consistent with" to add "the spirit and the intent," "shall be consistent with the spirit and the intent." To me, those are waffly. That would waffle it an awful lot, in my own opinion. To show you that some of us do accept compromises, I prefer the phrase "will conform to," but I'm prepared to live with "shall be consistent with." I would like to hear what your opinions are.

I think what's wrong with the planning process all around, whether it be from the point of view of developers or community groups or environmentalists or councils, is that there are too many "maybes," and that what we have to do is get rid of the "maybes" and the "yes, buts" and put in, "No, you can't do it." Then make sure there are no exceptions to it, so that you know, if you are a developer, that you are not going to be disadvantaged because somebody else might get a "yes, but" and a "maybe" when you're getting a "no."

So I'd like to hear your comments about AMO's suggestion. It almost seems to me like what they're trying to do is to water it down so they can continue doing what they were doing all along, and that may not be acceptable to a lot of community groups and ratepayers that I know of.

**Ms Greig:** I think we've said more or less what we think should happen and that is that it should be "shall be consistent with." That is clear.

I echo your point exactly. I think if the rules are clearly stated, if the limitations within which development can occur are clearly stated up front at the beginning of the process, then we avoid a lot of the time and a lot of the anger and frustration that come of the unclearness that currently exists.

My opinion is that development is going to continue to occur, growth is going to continue to occur, and what we're trying to do is set up some acceptable frameworks within which it should occur. The provincial role in that should be to strongly state and direct what that framework is. That's what the provincial role in planning should be. If that's what the provincial role should be, then we need to make it strong and we don't need to

waffle on what the language is.

**Mr Perruzza:** My question is very brief and it refers to something you talked about in your brief, and that is the definition of what constitutes sort of a legitimate planning ground type argument and what would be considered frivolous and vexatious. So that we have it in Hansard as well so that when the OMB panelists go back and try to figure out how they're going to define that, I'd like to know from you what a good planning ground argument is and what you would consider to be frivolous and vexatious.

**Ms Greig:** I don't think I can answer that question in the time allotted. There are all kinds of valid land use planning grounds, and I guess my concern with this statement is its vagueness and that there actually are land use planning interests stated quite clearly at the beginning of the bill, at the beginning of the proposed act. I don't feel I can answer your question in a meaningful way because there's a whole range of things that could be frivolous or vexatious and a whole range of things that would be valid.

**Mr Eddy:** Thank you for your presentation. We're pleased to have it. A common thread through nearly all of the presentations is that indeed provincial ministries and Ontario Hydro should be following the policies. I don't know why it's not there, and I'd like to have that explanation at some convenient time. But it's not there and people are pointing it out and they're very concerned that it's not there. So you make a very good point.

I just wonder if you have a copy of Looking Ahead: A Wild Life Strategy for Ontario, produced by MNR. Do you have a copy of it?

**Ms Greig:** I have had a copy, an earlier version perhaps.

**Mr Eddy:** You do have a copy of it?

**Ms Greig:** I don't know if I have a copy of that version, but I believe I saw an earlier version.

**Mr Grandmaître:** How did you get started? How did your council get started?

**Ms Greig:** How did our organization get started? What did it come out of? I believe it came out of a community conference on sustainable development. There were all kinds of issues identified that needed to be addressed. There were some isolated groups dealing with different issues and it was felt that there needed to be a stronger network and a stronger cohesive force that was dealing with these issues, and from that the Eco-Council was developed.

**Mr Grandmaître:** What kind of cooperation are you getting from the local councils? Because it's Peterborough "and area."

**Ms Greig:** From other municipalities?

**Mr Grandmaître:** Yes.

**Ms Greig:** We have representatives on our body from a variety of different municipalities. We have someone from Lakefield, from Norwood, and we often have individuals from the Millbrook area. We address issues that deal with the broader region, such as the county plan, and as a group of people who are the most active in the

organization, we try to address issues in a way and provide education and information on issues that are of relevance to the entire region.

**Mr Grandmaître:** Would you say that you're successful in your working relations with local councils?

**Ms Greig:** With local councils, yes, I would say actually we're fairly successful.

**Mr Grandmaître:** Good.

**The Chair:** We thank you for participating in these hearings.

**Ms Greig:** Thank you for the opportunity.

**The Chair:** Everyone, of course, has heard all of your views on these issues.

**Mr Wiseman:** While we're waiting for the next group to come forward, I'm wondering if it's possible that we could extend an invitation to the Ministry of Environment and Energy and have them come to talk to us about what kind of possibilities we could have of including septic, and maybe also hear from the Ministry of Municipal Affairs at some later date as to the rationale behind the exclusion and what possibly we could do to include in the Planning Act the other ministries. We're hearing this as a common theme, and I think we should hear it from the ministries, if we can work that out somehow.

**Mr Eddy:** I strongly endorse that request because it comes forward time after time. Of course, the big concern is that I think the minister of the day, in whatever ministry, will go any way they want. It would be good to hear.

**Mr Curling:** Hydro should be here too.

**The Chair:** We'll take that into consideration. I think we might want to discuss this perhaps in subcommittee, if that's the way to do it.

1430

#### COUNTY OF PETERBOROUGH

**The Chair:** We invite the county of Peterborough.

**Mr Stewart:** Thank you, Mr Chair. I would like to introduce the clerk administrator of Peterborough county, Mr Doug Armstrong, as well as the director of planning, Mr Brian Weir.

As warden of the county of Peterborough, we are pleased that your committee has seen fit to meet in Peterborough to hear comments regarding Bill 163. We trust that the entire committee will be aware of the discussions and presentations you hear at the various meetings you have throughout this province.

We would like to comment, first, that Bill 163, in our opinion, is improper legislation inasmuch as the very title states a number of significant legislative changes have been incorporated into one bill. Planning and development, conflict of interest and other amendments to the Planning Act and the Municipal Act, by themselves, are complex. Incorporating them into one piece of legislation, we suggest the public may not become fully aware as to what legislative changes are being made. It has been some time since one piece of legislation has received as much attention as Bill 163, we believe in part due to its complexity.

The county of Peterborough has reviewed Bill 163 and

has a number of major concerns. We have attached a report from our director of planning which was adopted by our county council. A report from the county's chief administrative officer was adopted also by council, both expressing concerns on specific areas of the legislation. During this presentation we would like to highlight some of the more serious concerns as we see it, and trust the committee will review all the documents presented.

Local Government Disclosure of Interest Act, 1994: The imposition of additional obligations on local government representatives is taken very seriously, I assure you. The legislation as drafted tends to suggest that municipal government representatives have conflicts that are unreported. Very few members of municipal councils or boards or commissions have been charged with conflict, and even fewer convicted.

The suggestion that the majority of the numbers of complaints under the Conflict of Interest Act come from smaller municipalities is indeed misrepresentation. The percentage of municipalities with less than 10,000 population is by and large the majority of municipalities in Ontario. Therefore any suggestion that a higher percentage of charges are from small municipalities is misleading.

The requirement that a member's spouse and family's assets be listed is, in short, an invasion of privacy. It is an invasion of privacy that members of the provincial Legislature may not be subject to, as many of the records that are to be filed by members of the Legislature are not readily available to the public. The proposed legislation requires that the declaration by members of municipal bodies must be kept in a register in the clerk's office, open to the public at all times, and I believe that is the difference.

If it is necessary to list the information for the member, his or her spouse and family, we request that it be subject to applications under the freedom of information act. This would be at least in keeping with provisions for provincial members.

The matter of recording conflict-of-interest disclosures in a registry seems to be somewhat redundant. It should be sufficient information to have it recorded in the minutes of the meeting. Thus, anyone reading the minutes would be aware of when the disclosure took place.

We are extremely concerned that some members of the public who may consider being involved as a member of municipal council or other bodies may not do so due to the requirements of recording assets and income sources.

A very fundamental question follows: What benefit can it be to list assets that are located in another municipality?

We have proposed that if the details of assets and liabilities are to be maintained it be maintained either by the province, at the county, or at least be subject to disclosure through applications under the freedom of information act.

Planning Act changes: Amendments being made under Bill 163 relating to planning in Ontario are headed in the wrong direction.

It has been our understanding that the province of



Ontario has been promoting an improved planning process which would ultimately provide the developer and property owners with a speedier approach to resolution of planning issues.

First of all, Bill 163 requires that municipal councils make planning decisions which should be consistent with provincial policy statements. In our opinion, this is direct planning from the province. Each county or local municipality has different conditions than that which is prepared for by the province.

The Sewell commission advocated a stronger county planning system. Bill 163 completely disregards that approach and reduces the importance of county planning. We strongly object to this move, particularly as planning at the regional government level is not affected.

The notion that municipal planning areas may be established is a contradiction in direction from the province. It is unclear as to what the rationale is for this move. We seriously question why planning areas can be created between municipalities which are not part of the same county. In the event of a municipal planning authority area being established, a county official plan could not be enacted.

As noted in our reports, the financial provisions for municipal planning areas tend to undermine the authority of county jurisdiction. We suggest this is a provincial government approach to restructure counties. The same conditions are not proposed for regional municipalities.

Bill 163 provides that the Ministry of Municipal Affairs has the authority for official plan approval. Our concern is that an individual's or a municipality's right to appeal to the Ontario Municipal Board may be vetoed by Ministry of Municipal Affairs' staff under subsection 17(1), as proposed, since the approval authority for official plan amendments rests with the ministry.

We have included a number of other concerns in our document, concerns which we believe will impede land use planning in Ontario. Additional time has been added to the planning process in certain functions. This is counter to the provincial initiative to speed up planning processes in Ontario.

We would like to express our concern that limits have been imposed on parkland dedication conditions. We would suggest the initial value of parkland be deducted from any values created due to intensified development. This would be less confusing than trying to deal with amended development changes schedules.

We've also attached copies of submissions received from the following local municipalities in Peterborough county: the township of Cavan, the township of Chandos, the township of Burleigh and Anstruther, along with the reports of our staff.

Ladies and gentlemen, we would like to thank you for taking time to listen to our submission and, as noted earlier, we would appreciate it if the committee reviews all of the suggestions that have been presented.

1440

**Mr Wiseman:** I have a couple of questions. The first thing is that I personally haven't heard anybody casting the kinds of aspersions and assaults on the credibility of

municipal councillors in the rural areas. I don't see that—on page 2, where you talk about there being a larger percentage of people who are on council doing things that they shouldn't be doing. I haven't heard that and I don't believe it at all; I don't have that view of the world. I just wanted to make that as a comment.

The comment I really would like to get into is this "shall be consistent with." It seems to me that we're hearing, from municipal councils and counties and all of the elected officials, that they would like to see "with regard to" and that all of the community representatives are saying that "shall be consistent with" is the very least. In fact, we heard yesterday from a group that said if it's going to be watered down to be "shall be consistent with," they would like to see "shall be consistent with and conform to" the policy guidelines.

I think that's a real problem because there seems to be a division in this. But there does seem to be unanimity around the fact that what we need to do is get rid of the maybes in the Planning Act so that people can be very clear about what they can and cannot do. Even the developers in my riding, where there's a lot of them, say they don't really care what's in the Planning Act as long as it's clearly defined, as long as it's consistent, across the board, so that one developer or one person doesn't get an advantage over another one and that it's applied in a way that they know what the rules are. They just simply said: "If you tell me I can't do this, then I'm not going to buy the land to do it. But if you tell me what I can do, that's what I will do"

When you start talking about "will conform to" or "will have regard to," if you go with "will have regard to," you're putting a whole lot of maybes back into the system. You're really going to water it down and you're going to be no further ahead. Citizens' groups are going to go to the Ontario Municipal Board and they're going to be told: "Well, we had regard for that. We looked at that piece of paper on that policy statement. We disagreed with it, so we had regard for it." What are you going to do about it? This is what we're hearing and this is the dichotomy.

Do we just totally disregard the public? How do we make sure that this works for everybody and how can it work for everybody if you keep muddying the waters with "maybes" and "yes, buts" and "have regard for?"

**Mr Stewart:** I think what we're saying here, sir, is the fact that what you're doing is taking the total planning element away from the municipality. Back, they wanted a very strong county government to control or to have certain controls regarding planning. If we have to be on a consistent basis with the provincial statements, there are different conditions in many municipalities. If you have something that is totally consistent across the province, what may work in one area may not work in another one.

**Mr Wiseman:** Can you give me an example there, maybe?

**Mr Stewart:** I'm going to maybe turn it over to our planning director for the examples, but I think that's one of the problems we have. You wanted a strong county government and it's slowly being taken away from us

under this particular type of legislation. It was my understanding, and I've certainly talked to the ministers over the last three years as warden, that it's what they were looking for.

Here we are, we've been going through an official plan in Peterborough county for 15 years—finally got it through with good help from the ministry. The ministry seemed very pleased it was happening. Now all of a sudden we're looking at something that's taking that authority away from it as far as we're concerned.

**Mr Brian Weir:** To shed some more light on to this, I think we recognize at the county that the wording "shall have regard to" has been misused or misapplied and is not appropriate.

In reviewing the drafts that came out before this package, there was a little bit of an explanation as per policy statements and it said something about the way it's drafted so it'll maintain the spirit and intent of the provincial policy statements. As a county, we picked up on that and in our submission that comes from the planning department, specifically on the Planning Act revisions, we do recommend that the wording "shall maintain the spirit and intent of" be used as opposed to "be consistent with," because, in our experience in the past, we found that a lot of the provincial policy statements have been GTA centred, and while you're trying to create consistency across the province, and that's admirable, there are definite problems when you reach the rural areas.

A specific example is the housing policy statement where you're talking about the provision of affordable housing when in some of our municipalities all we have is cottage development—impossible to provide affordable housing. The other thing is that a lot of our development occurs on vacant lots. Someone will actually purchase a lot and build a house to suit their own means.

We find that adhering to some of the provincial policy statements, the current ones and the proposed ones, would be difficult from a rural perspective and that having a little bit of flexibility would be beneficial to us.

The other suggestion is to have two different policy statements, which I agree is equally as difficult, one for the GTA or builtup areas and one for more remote.

**Mr Wiseman:** But then you'd run into a problem where you have urban-rural mix, you'd have a real battle over the definition of which policy statement you would use. I could just see problems unfolding there, but thank you. I think I've run out of time.

**Mr Curling:** Your worship, I think your presentation and your delegation here have been direct and forthcoming in a way that we have heard this remark quite often, especially in the sense that here we have an omnibus bill before us. Normally when we have such legislation, we have a 30-minute presentation for you to interact with the legislators here so we can hear where you're coming from. Normally an omnibus bill doesn't give you a chance to really express some of your concerns.

As a matter of fact, earlier on today there was a presenter who had written to the minister before about her concern and hoping that she can bring it before here

and they said, "Why don't you present it here?" As a matter of fact, that was not even taken into consideration. We hope they will take it into consideration. I would hope also that the member for Peterborough would have spoken up and seen some of the concerns and I hope they're advocated with some of the changes that you are seeking here. It is really a top-down situation, dictated by quarters who don't really need the input of the other municipality.

What I need to ask you though, because I'm a perpetual optimist in these situations, regardless that the government has ignored some of the recommendations of the Sewell commission and has ignored completely the process that you put forward, do you think it is too late to get those changes or do you feel they will be changed by this legislation that could reflect some of the things you are so seriously concerned about?

**Mr Weir:** I have concern, as in the past, where we have made presentations on various subject that appear not to have been listened to and legislation keeps going ahead. I feel that if we're going to be a team and get good planning for Ontario, then we better start, sit back and take a look at where we're going.

I have difficulty when the author of your report, who is Mr Sewell, stands up at AMO two weeks ago and totally criticizes the bill. I have a great deal of difficulty. For a man—where they spent thousands and millions of dollars going around this province listening to us, getting our concerns and then totally present a bill that has many of the concerns not addressed.

Sir, I am not as optimistic as you are, but I would suggest it is time that we all become very optimistic and not put into place something that is going to hamper our level of government, and I believe our level of government, as a county and as a township or village, is as important as the level of government I'm talking to today.

**Mr Eddy:** Thank you very much for your presentation. You've said many things that others have said to us, and I agree about putting so many things in the bill. It's very difficult for the members of the committee to get opinions of everyone on the various matters when so many things have been put in.

Local Government Disclosure of Interest Act: Thank you for giving us some alternatives. I understand your concern because many, many other people are concerned and you've given us some alternatives there to look at. I thank you and we will look at them.

I agree that urban and rural are different and it should be split. It's been mentioned it's impossible because of suburban—it isn't, it's by designation of municipalities. What are you? What are you determined to be? And it could be done. I appreciate that and it is provincial planning being forced on—the provincial policies are very strong and must be adhered to.

I share your concern about having municipalities opt out of the county planning system. I would say the only way that could happen is if the county council voted on it and agreed to a municipality opting out. It shouldn't be done any other way, and I'm very strong on that.



**The Chair:** Mr Eddy—

**Mr Eddy:** It's a good brief. I appreciate it and I'll be giving it consideration. Thank you.

**The Chair:** Thank you. Mr McLean.

**Mr Eddy:** I'll learn to talk faster too.

**Mr McLean:** I want to welcome you here today and thank you for your presentation. You've raised some of the issues that others have raised also, but I wanted to ask you, do you think the government probably has a hidden agenda of county restructuring.

**Mr Stewart:** Well—

**Mr Villeneuve:** That's not a leading question.

**Mr Stewart:** Maybe I could answer it this way: I've been very involved for three years with county restructuring in Peterborough county and we suggested three years ago, when I was first elected as warden, that if we didn't do it, the province would do it for us. Unfortunately, there was a change in ministers and the only person left with his neck stuck out was me.

I believe in restructuring. I believe that down the road we are going to have to look at restructuring, not only at your level of government but at the county level as well. If we don't, we will not survive. I think we have to find ways of doing business better.

Whether it's a hidden agenda or not I am not about to say, but I will say this: I think it's something all of us are going to have to look very, very seriously at in the future at all levels. We're doing it in business. I believe we're going to have to give consideration to it at the government level as well.

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**Mr McLean:** I'm from the county of Simcoe, so I know exactly—

**Mr Stewart:** You know all about it, sir.

**Mr McLean:** —what it's all about. But I often think that probably some amalgamations may be the most important thing that a lot of counties could do in order to start it in the right direction.

A concern was raised with regard to the importance of the county. Sewell had made very strong recommendations that counties should be given more control and more power. In the municipal role in the understanding of Ontario's planning reform it says once they have their official plan and approval has been given, they can proceed, but unfortunately there have been no approvals given to any counties. There are counties that have official plans that have been accepted by the minister and yet they have not been designated that approval process.

The concerns you raise are very well founded and I'm hoping the ministry will probably make some of those recommendations and put them in the approval process and perhaps the parliamentary assistant—probably it would be whispered in his ear that it's already happening.

**Mr Hayes:** I will actually correct you on a few points, Mr McLean.

**The Chair:** Mr Hayes has some clarification to make.

**Mr Hayes:** Just on Mr McLean's last statement that there are no counties that can give subdivision approvals,

that is not accurate at all because there are four counties right now, including Victoria, which made a presentation earlier today. Of course, it looks like Peterborough is coming pretty close to getting that authority. On behalf of the ministry, I want to compliment you for the hard work you've done getting your official plan together. It's being reviewed right now and I understand it won't be long before you will be delegated for subdivision approvals, for example.

**Mr Stewart:** We're hoping so, sir.

**Mr Hayes:** I hope I made that clear. The other point I'd like to make also, Mr Chair, if I may, concerns comments Mr Sewell had made at AMO. He did make some comments that he was not totally pleased, and I don't know of anybody—I have had all kinds of suggestions where everybody doesn't agree with everything I have to say. That's for sure. But the fact of the matter is that what we failed to let the public know is that Mr Sewell also made a presentation to this very committee here and was very, very positive about this piece of legislation. I just wanted to say that for the benefit of members who maybe weren't listening at that time.

**Mr McLean:** Certain sections of it.

**Mr Hayes:** We won't get back into a debate. I actually want to address the issue so there isn't any other misunderstanding. You say there is misrepresentation when there's a suggestion made that the majority of numbers of complaints under the conflict-of-interest act came from small municipalities and you indicated in here that that is misrepresentation and also that it was misleading.

I can tell you, and I will repeat it again, the statements that we have made are that 40% of the complaints dealing with conflict of interest come from municipalities with under 5,000 population. That's what we made. We did not make a statement that it was a majority. I just want to make that clear.

Also on page 3, "The Sewell commission advocated a stronger county planning system." Yes, and that's correct. But you're saying that we are reducing the importance of county planning. Well, I have to say that it is the opposite, that we certainly are encouraging and looking at the planning.

**Mr Eddy:** Except the opting out.

**Mr Hayes:** Yes. There are a lot of issues that people have raised and you have raised here yourselves in a very good presentation. That's why we are doing what we are doing today. The government will be coming with amendments and the opposition parties will be coming with amendments and I'm sure there will be some changes that will be made that will address some of your concerns—not all your concerns but some of them.

I would also like to have Pat Boeckner clarify the section, the last paragraph on page 3 where you talk about municipal planning areas being established and so on.

**Ms Boeckner:** The request was to have the last sentence in the last paragraph on page 3 clarified. The submission says that, "In the event of a municipal planning authority area being established, a county

official plan could not be enacted." I think what the bill says is that where a municipal planning authority is enacted, that municipal planning authority would have to do an official plan and could receive delegation within the area covered by the authority and that the county official plan would not apply in that area. But that's not to say that the county official plan would not cover the area remaining outside of the municipal planning authority. They could exist side by side.

**The Chair:** Mr Stewart, do you want to make some final remarks based on these clarifications?

**Mr Stewart:** No. Mr Armstrong, would you like to, or Mr Weir?

**The Chair:** Not by way of making a speech but simply—

**Mr Stewart:** No, sir, we're not going to do that. The only comment I would make to you is that we've done many presentations in my three years and I would really ask that you listen and get involved with some of these requests. It's a lot different out in rural Ontario than it is in other areas. We're different. We're still all Ontarians, but we are different and we have different concerns, different planning areas. So I would really ask that you give consideration to what we've asked.

Certainly this conflict-of-interest thing, when you're again saying what is not good enough for us has got to be different for you and vice versa, I think that's where we have a concern. We're all supposed to be politicians. I would suggest that we all should be treated accordingly. Would either of you gentlemen like to comment?

**Mr Doug Armstrong:** We do understand about the county official plan. A county can have an official plan, but it doesn't apply to those areas that might be designated, which we think is a mechanism that went out of vogue probably 15 years ago. I think one of your members would remember when counties had a number of planning authorities and areas within them.

**Mr Eddy:** Twenty-one years.

**Mr Armstrong:** Twenty-one years ago. That's the concern. The other has to do with the percentage of complaints. By and large, the percentage of municipalities under 5,000 is much larger than over. I think that's somewhat misleading and the complexity of this omnibus legislation is just more than municipalities can—when your amendments come through, I wonder, Mr Chairman, how much time will be given to people to respond to the amendments.

**The Chair:** We won't. These are the hearings. The amendments are based on what we are hearing obviously, and I should say the members have heard your concerns. We thank you for participating in these discussions.

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#### CITY OF KINGSTON

**The Chair:** We invite the city of Kingston, Councillor Ian MacInnis and Mr Norman Jackson, city solicitor. Welcome.

**Mr Norman Jackson:** Thank you for your indulgence in scheduling us. I also thank you for previous appearances we've had before parliamentary committees on

legislation that the government and the other parties have supported from Kingston. We appreciate the assistance of the government in downsizing and other legislation that we've had in Kingston.

We come before you today to recognize the need for this type of legislation and particularly we want to address the conflict-of-interest legislation as a part of the bill. Our view is that this legislation is required, is important, and we have conveyed that to your staff. We appreciate as well that your staff have taken the time to come to Kingston and discuss the legislation with us.

We see that there's a need to have legislation such as this, which is very general. We're dealing again with just the conflict-of-interest part of the bill. We know it must be somewhat general because the more specific you make it, you may exclude certain situations you wish you'd had some broadness to cover. But we would like you to move in the direction of making it more specific for purposes of making it easier for members of the public and for members of council who are subject to the legislation to be able to interpret it and follow it and know what the rules of the game are.

We suggest that our amendments, which we will briefly deal with, would make the legislation more workable, and that's what the province has suggested is the aim of the bill. We would ask you to consider the amendments put forward in a positive frame, not a negative frame, with a view to making the legislation more understandable and certainly legislation that we believe would be more accepted by those who are going to be subject to it.

We first refer to the commissioner's office and have a concern that the commissioner's office is something that could become very expensive, very bureaucratic and we express some caution with its creation. But when it's created, we'd like to see it made more workable in terms of the type of information that can come from such an office. We would like to see the office made more of a determination-making bureau to save the expense and the hardship for some people of ending up with cases in court.

Our suggestion is that the office be made similar to other offices that exist now in the provincial sphere, the Human Rights Commission or the Ontario Municipal Board where hearings can be held less formally, and that the office be created with some decision-making power to do that. In doing so, we know that rights attach to that, but we think that not only the legislation should suggest there can be rulings or directives, but we would like to see the office be in a position where it could give opinions or rulings on individual situations where warranted.

We have a strong concern with the removal of the clause on inadvertence or error. We think that because legislation of this kind has to be written to apply in so many different situations that cannot all be contemplated, because we're dealing with the field of morality, there has to be a saving provision of some kind. It has been used frequently in the courts.

There may be some concern about the frequency of the use, but we suggest that if legislation is written in such



a way that the ordinary person can read it and not necessarily know what is a direct or indirect pecuniary interest, they may need to consult a lawyer to review case law, and if that's the case, how can a person who has consulted a lawyer, received that advice, not rely on that advice? We suggest that the bona fide error in judgement serves an important purpose and should not be removed.

The type of situation that can result from a hearing where a conflict is found and an excuse is provided by the bona fide error in judgement can still render a strong effect on the public knowing about a situation. Certainly on the individual who is subject to a proceeding, has to pay his own lawyer's fees and perhaps has to pay costs for other parties in the hearing, there's enough of a penalty without imposing further penalties.

We suggest the disclosure of assets provision is useful. We in Kingston originally had a concern about how broad it was. There had been some revisions to that, and I guess now that it has been revised, although there is still some concern in the city of Kingston, our feeling is that it should be made more applicable to all other boards and commissions in the municipal sphere if it's going to apply.

One of our largest concerns, and you will hear more of this from Councillor MacInnis, who is with me, is the interest in common provision, which is an exception in the act. Again, it is a very general provision and, based on recent decisions emanating in Kingston and on appeal to the Divisional Court, the interest in common has been held to be an interest in common which one must have with almost every ratepayer in the municipality. Because of the generality of that, we believe it's not able to be used in a useful way.

To be practical, we would suggest that that stay, but have a further rider in the legislation to indicate that the interest in common can be with a group of persons of like kind in the municipality who are under consideration in the issue. Similarly, to make the legislation more workable, the exception regarding remoteness and insignificance is also very difficult to apply and, from our reading of approximately 30 cases in this field, it has never really been applied.

We would suggest, again to make things better and more workable, that there be a definition of what may be a level, such as \$1,000, below which an interest will be deemed to be so remote or insignificant that it should not be subject to the act.

We commend you for proceeding as you have. I personally served on a previous conflict-of-interest committee with the province a number of years ago and I hope what I tried to do made things better. I'm not so sure, the way things have worked out, but it's a difficult task.

1510

We ask you to proceed. We are satisfied that our brief will provide you with the detail, along with Councillor MacInnis's personal observations, and we would hope to be kept informed of changes, but we're satisfied we've been given an opportunity for the input today and thank you for that.

**Mr Ian MacInnis:** Mr Jackson has just given you an overview of some of the concerns that the city of Kingston has with respect to the proposed new disclosure of interest act. I am here today because I've had two years of personal experience specifically to do with the Municipal Conflict of Interest Act. Basically what I want to do is just take a few moments to drive home a few points that he has raised.

The Municipal Conflict of Interest Act requires a member not to participate in a matter in which he or she has a pecuniary interest, a financial interest. The one exception of course to that is where a member has an interest that is shared with others in the community. The legislation as it reads today and is proposed in the future is that you must in fact have an interest that is shared with "electors generally." That's how it reads today. How it reads tomorrow may be "persons generally." That's the terminology change that's being proposed.

This interest in common exception is relied upon more than any other exception, yet it is impossible for any member anywhere to have an interest that is shared in common with everyone else in the community. It's an impossibility, and that's based on not only the law as it is written but in recent case law right up to the appeal level at the Ontario Divisional Court on May 9 of this year.

Let me give you a couple of examples. If you sell real estate for a living, let's say you're a realtor and you're on a city council, according to the case law and the law that exists, the Municipal Conflict of Interest Act, as well as the local disclosure of interest act, you cannot vote on any matter pertaining to real estate because not everyone else in the community is a realtor.

If you are a landlord, you can't vote on matters pertaining to rental properties in your community because not everyone else in the community is a landlord. If you are in any business whatsoever, you cannot vote on matters pertaining to similar businesses because not everyone else in the community is in business. We can provide you, of course, with the documentation to support what I'm saying.

Some would even argue that members are in fact allowed to vote on such things as mill rate increases because, after all, we all pay property taxes, but it's interesting because there are a number of lawyers in town in Kingston—a fine school exists there as a matter of fact, producing a lot of good lawyers—and they have said to me that an argument could be put forward in the courts that in fact we shouldn't be voting on mill rate increases because not everybody's a property taxpayer in the city of Kingston or in any other municipality. They could be tenants. They don't pay it. What about the raises we give ourselves? We don't share that interest in common with everyone else in the community.

On May 9, 1994, the Ontario Divisional Court heard an appeal by three councillors of the city of Kingston who had been found in violation of the Municipal Conflict of Interest Act. The three councillors had participated—you're going to love this—in the Sunday shopping debate in 1992. They included a commission salesman from Sears Canada—he sells lawnmowers—a

tobacco store owner and a flea market operator. That happened to be me. The three-judge panel dismissed the councillors' appeal, so we lost the case on May 9, saying that although the councillors had an interest in common to persons engaged in the retail trade in the city of Kingston—that's 7,000 people that are involved in retail trade in the city of Kingston—unfortunately our pecuniary interests, our financial interests were not in common to electors generally. So we lost the case.

How many people does it take to constitute an interest in common? According to the results to the cases that we have, I can show you very clearly it takes every single person in the community, and you cannot name a person in this room or anywhere in the world who has an interest that is shared in common with everyone else in the community. It's an impossibility. So you've got to change that definition. Okay?

Now I'm here not just to complain and point out problems, I'm here to offer a few solutions too. Of course the decision makes it virtually impossible to serve on municipal councils. The proposed Local Government Disclosure of Interest Act exacerbates the situation by changing the wording from interest "in common with electors generally" to interest "in common with persons generally." That means every man, woman, child in your community. You have to have an interest in common with them, and it's impossible.

The solution is to redefine the interest in common as follows: A pecuniary interest should be one that is held in common with that segment of the population affected by the vote. So if you're dealing with a retail matter, then 7,000 people in the retail trade, you would have an interest in common with and that should be quite satisfactory.

The exception—I'm changing the subject to the exception called an interest "that is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member"—serves no purpose. That exception serves no purpose because the moment there's even a potential of a monetary gain or loss, even without it being defined, it is dismissed by the courts and maybe rightfully so, because the Legislature has not taken the time to define what is significant versus insignificant.

In terms of disclosure, you're saying everything \$1,000 or more should be disclosed. Well, then, make \$1,000 the point at which insignificant becomes significant. I think we have to be more definitive and crisper in our definitions.

The proposed role of the commissioner's office should be modified. It should play a preventive role. If a member has a concern about an upcoming issue, he or she should be able to contact the commissioner's office and get an advance ruling. Today, members must pay lawyers' fees for a legal opinion. I can tell you that there are a few members of our council who have paid lawyers' fees at \$1,200 a crack for a legal opinion, and as you've heard in the case of the three Kingston councillors, the legal opinions are not always worth a whole heck of a lot, but you still lay out the money.

I think the financial burden that's caused by this legislation, both on the part of the person bringing the

action and indeed the councillors who are defending themselves, should be eliminated. I think that's wrong.

I also believe the commissioner's office should actually hear the cases. I don't think the courts should be involved except at the appeal level. I think it should be dealt with at the OMB in an OMB style or a Human Rights Commission style of hearing. They're user-friendly and they're a lot less expensive than going through the courts. It cost the three councillors to defend themselves for two years \$45,000; \$45,000 was our legal cost and it's just not worth it.

The "saving by reason of inadvertence or bona fide error in judgement" clause should be kept. In the Kingston case, not only did the councillors act responsibly in speaking to several lawyers and obtaining legal opinions before they proceeded further with the Sunday shopping debate, but the trial judge, in finding the councillors in violation of the act, also wrote:

"I emphasize that there has been no allegation of corruption levelled at any of the respondents. I am satisfied that all of the respondents are men of good character and have rendered service of inestimable value to the community. I think, participating as they did, they were acting in the best interests of the people they represented."

What more do you want from an elected official other than acting in the best interests of the people they were elected to represent? That's what the judge said. "I'm satisfied," he said, "on all the facts that the contravention of the act by each of the respondents was due to an error in judgement." That very fine compliment appeared in the paper, but it cost me \$45,000. That's an expensive compliment, and those things can be avoided. There shouldn't be this kind of animosity that's generated from these kinds of cases. I mean, the hard feelings that develop, they're avoidable.

I think the message, too, that the judge was sending, in my opinion, was: "Too bad this law stinks. Too bad this law is written so poorly and so ambiguously. Too bad, but it's impossible, Ian MacInnis and other councillors, for you not to have a conflict of interest and so therefore I have to find you in conflict."

The proposal is to remove the saving clause and impose severe, draconian measures. If that's done, the lives of a good number of decent people in this province will, in my opinion, be destroyed because there are some very vindictive people out there who, if they have the money and the will, will take you to task and do you in. Yet, you'll get a fine compliment from the judge as you leave office and are dishonoured.

I'm almost finished, Mr Chairman. I know I'm going on, but this is important. This is very important because—

**The Chair:** I understand. Keep going.

**Mr MacInnis:** All right. I hope you're with me on my every word here.

The disclosure of assets and liabilities should in fact be extended to all elected officials, non-elected board members, appointees and advisers to councils, commissions and boards.



What I find interesting is that the legislation is starting to narrow on who's going to be brought into the net of this. Under the existing legislation, all these boards and commissions are included. Under the new proposal, they're all being eliminated and it's going to be the guys on city council and the PUC commissioners whose necks will be on the line constantly. Meanwhile, you have people who influence every day through their business improvement area or through their school board or through the library board the voting of all those on council.

1520

Why isn't their financial interest just as important as mine? Why shouldn't their influence or their participation in a vote be scrutinized just as much as my interest and my participation? So I believe that the list that exists right now under the Municipal Conflict of Interest Act should be maintained and not eliminated.

I'm concluding now. I am certain that the intent of this legislation is to catch crooks. However, it is indeed so poorly written and ambiguous, that it has become a political minefield for honest municipal politicians who become the target of nasty vendettas involving richer or well-funded opponents. Sitting on local council has become a game of Russian roulette for certain members and the vagaries of the law require some crisper definitions.

I can go back to any council agenda and find two or three councillors that night who were in conflict. They didn't know it and the conflict was silly or remote, but technically and by the law they were in conflict and if somebody accused them, they would go through the same kind of expensive, embarrassing ordeal that the members of council did in the city of Kingston.

So I really sincerely ask you to think long and hard about some of what I think are substantive, reasonable suggestions that we're putting forward on this.

**Mr Curling:** I want to thank you for your presentation. Again, you've gotten caught in the trap of having this short time to present some very important observations that you've found here. The conflict of interest is only one aspect of this great omnibus bill, itself.

I may make just a comment instead of a question. I just have some concern, and I address this to the solicitor, if you're going to follow the procedure of the Human Rights Commission—because they go into the direction of investigator and prosecutor, and what has happened here is an extremely long backlog that follows because they're trying to play all these kinds of roles. Although I see what your intent is, everyone else would be going there to question those elected people and those who are appointed to the board for some sort of clarification, while in the meantime, the other people are using it also. So that's one of the parts that I would have some sort of question on.

I can see again you have opened our eyes to many other things. One individual previous to here, the warden, stated should one declare their interests outside of their jurisdiction; in other words, if they are not in their county, whether they should say that they have an

investment down in Toronto, whether or not that's a conflict of interest. I think those are some of the things we have to look at.

You had a point; my colleague would just like to put in here.

**Mr Eddy:** I really appreciate you bringing these problems to our attention now. It's important. Could we have a copy of the points that you're recommending, the changes?

**Mr MacInnis:** Certainly.

**Mr Eddy:** I think that would be very useful. Thank you.

**The Chair:** Thank you.

**Mr Grandmaitre:** Is that it?

**The Chair:** It's two minutes per caucus. There isn't much time.

**Mr Villeneuve:** Thank you, gentlemen, for making that presentation. I recall, back in the days when there was a provincial government known as Tory in Ontario that the Minister of Agriculture was taken to task because of the farm tax rebate, and he was exonerated. You bring forth a much more complex situation, and I guess it went to the courts: the availability of the information. I think you're agreeable to divulge. What sort of a process should someone desirous of obtaining Ian MacInnis's pedigree—is it readily available or should it be through freedom of information? Give us some guidance.

**Mr MacInnis:** I'll deal with your question and also the point I think Mr Curling made.

I don't have any problem whatsoever disclosing my assets and liabilities as prescribed or as being suggested. I don't like the idea, though, of people frivolously nosing through other people's business. It's just a damned inconvenience and I don't think anybody appreciates that.

Making it accessible through the local municipal clerk means every nosy busybody—and you know them; they're in your town—will go down and look at your stuff and raise trouble for you or spread rumours about you that may or may not be—

**Mr Villeneuve:** Perception.

**Mr MacInnis:** It's perception. I think that I'd like to see a central registry maintained at Queen's Park, frankly. I think we should all be required to file our disclosure of assets and liabilities to the local clerk and he or she in turn files it with, perhaps, the commissioner's office. It might make good sense, especially since I'm also suggesting the commissioner's office be called in a preventive role. So if I phone up and say, "It's Ian MacInnis and I'm concerned about what's coming up next Tuesday night at council," they can take my file and say: "Okay, Ian. You own this"—actually they're going to find out I own nothing—"and you're okay. Go ahead." And any one of us could then do that.

So if somebody wants to know what my assets and liabilities are, I think they should be able to contact the commissioner's office, state who they are, what their purpose is and perhaps pay a nominal \$10 processing user fee for a copy of it, just the same as I pay a fee for my birth certificate.

**Mr Winninger:** I find this issue of conflict of interest a matter of endless fascination. I don't necessarily agree with the argument that you and others have made that conflict of interest will preclude the best candidates from running for office. We've had conflict-of-interest legislation for some years and I look around, particularly on the government side but even some on the opposition side: good candidates running for office.

But you raise a very good point, and that is that the commissioner can play an advisory and preventive role. If we have potential conflict-of-interest situations, we can call up the commissioner's office and in a fairly timely way get a response that will indicate to us whether or not we're treading on dangerous ground and avoid that kind of a situation. I think that would be invaluable to municipal councillors as well.

**Mr MacInnis:** Precisely.

**Mr Winninger:** But I do disagree with your assertion that the statement of assets and liabilities and other financial disclosure information be housed somewhere in Toronto or with the office of the commissioner as opposed to locally, where the electorate, in my view, have a direct interest in ensuring when their local councillors make decisions that they're not made for any financial or economic imperative, that they're made in the good spirit they're designed to.

I don't have a specific question to you, and I know that my colleague Mr Perruzza's looking for a moment as well, so you might want to respond.

**The Chair:** There's only one minute left, so we have a problem. It'll have to be a short question, Mr Perruzza, please.

**Mr Perruzza:** Yes, very briefly. I sort of share some of your concerns with respect to the conflict of interest stuff because it becomes really dicey when you look at some situations where you're sitting on a council. You have a brother-in-law who works for a company where there's a development going in and that company's located within a 100-metre radius or something of where your brother-in-law works and you say, "Gee, there's nothing wrong with this" and you vote in favour of that development. That company's property value is affected in some way. Your brother-in-law's working there.

Some guy who wants to get you—and I agree with you, if the objective is honesty and integrity, and you want to encourage honesty and integrity at the municipal level, but at the same time too you don't want to create the kinds of situations where it becomes really problematic for people. I think that this is an area we need to look at and we need to do some work for sure. I share a lot of the concerns that you raise.

**Mr MacInnis:** Thank you very much. Yes, I'll—

**The Chair:** As a comment?

**Mr MacInnis:** Just a 30-second comment, I promise you. Mr Curling made reference to the delays, I guess, with the backlog at the Human Rights Commission and would we encounter the same type of delay if we were to hear these appeals or hear these allegations in a similar way. In my case, my court case was two and a half years' long. I know OMB hearings, you can expedite them to 90

days or within 18 months usually. So I'm not sure, but certainly get the courts out of it. Get the courts out of it. It's too expensive for everybody.

Number two, Mr Winninger, you made reference to the system. The provincial system encourages good people to come. They keep coming, but your provincial system is different from ours. You just described—

**Mr Perruzza:** The rules apply—

**Mr MacInnis:** Yes, that's right. You just described that you can call the Conflict of Interest Commissioner and get some advice at least, or counselling in advance. I can't do that. Number two, you don't have to pay for it, I don't think, on an individual basis, and number three, I have to go to court and spend \$45,000, and I don't think any one of you wants to take \$45,000 of your MPP's—

*Interjection.*

**Mr MacInnis:** Yes, but I do agree 100% with the preventive measure. I think that's all I have.

**The Chair:** Mr MacInnis and Mr Jackson, we thank you for sharing your concerns and your ideas with this committee. Thank you for coming today.

1530

#### CITY OF VAUGHAN

**The Chair:** We invite the city of Vaughan: Ms Theresa Caron and Mr Scott Somerville.

I ask everyone in the room to keep the noise down because it's difficult to hear people. Can I ask you, Mr Johnson, if you want to share a few remarks with Mr MacInnis, perhaps outside.

**Mr Scott Somerville:** On behalf of the mayor and members of council of the city of Vaughan, Mrs Caron and myself are quite pleased to be here today and we thank you for your indulgence in hearing our proposals.

You may wonder why there are two senior administrators in front of you as opposed to municipal councillors, and I think our council, in reviewing the legislation and participating in AMO, decided that between Mrs Caron and myself there are some 23, 25 years of senior management experience within the city of Vaughan, with numerous municipal councils over that period of time, and in their opinion, we can best represent what they were trying to do through these proceedings, and that is perhaps pass on some of their concerns to you, as a committee, that would in some way maybe help you reach the decisions you have to reach in amending the legislation, or leaving it as is, but for the councils of the future.

They're not looking at it from the point of view necessarily of them today. They all recognize that on November 14 they're all going to the polls, but the spirit of the city of Vaughan's presentation is to look at the legislation as it will look to the future and that council to be elected on November 14, whatever composition it may be. Mrs Caron, our commissioner of legal and corporate services and our city solicitor, will be making the presentation on behalf of the city.

**Mrs Theresa Caron:** We have filed some written submissions with you that set out really several of the



concerns that the city of Vaughan council has with the proposed legislation, but for the purposes of today, we'd really like to concentrate just on about four of those areas.

Before I get started, I'd like to say we'd like to invite Councillor MacInnis back up here with us, because many of the things that he was saying he said so well, and they're things that we have included in our comments as well. We thought he expressed the concerns very well, and we'd like to adopt everything he said.

The first item that we would like to speak to today pertains to the provisions regarding open and closed meetings, and the requirement specifically that all votes be taken in public. The proposed act does provide for a number of matters that may be discussed in camera, but it requires that even those matters have to be the subject of a public vote. We can see some difficulties just from a practical point of view of trying to conduct business with that requirement. Take an example of a labour relations type of issue or the acquisition of land, and you would have the reports, you would have the advice, and you would have the staff all providing the information to council in an in camera session, which is appropriate under the legislation. You would have a discussion on the matter, appropriately at the in camera session, but when it came time to actually vote on what to do, the council would have to come out of the in camera session and take the vote in public.

We can see circumstances where they're going to do that and then they're going to think about something else that they might want to ask, or they'll take the vote and that'll lead to: "Well, now that we're going to do that, what about the next step? What are we going to do?" They're going to have to go back in camera again to get more advice, more direction, and they're going to be in and out, or in some circumstances they may come out and they may think, "Well, I would have liked to have asked that question, but, well, we're all out here now, and it's probably not that important."

You want to ensure that the council always has all the full information that it can have and that they feel comfortable that they can get whatever information or advice they need when they're making the decisions. It's hard to see what benefit that provision has, although it can cause this troublesome and cumbersome procedure, because the way our system works, an item comes before a committee of the whole in camera, if it's one of the properly excluded items, and it's discussed there. There's a vote taken at that point in camera.

**Mr Grandmaitre:** A registered vote?

**Mrs Caron:** It's recorded in the in camera minutes. It then appears on a public council agenda. The outcome of that vote is then recorded on the public council agenda, it's then reconsidered by council at a public council meeting and a public vote is taken. That occurs on every matter. So you'll always have a public vote, and you'll always have the outcome of the in camera vote recorded on a public council agenda. So it's difficult to see what the benefit is of requiring them to come out of the in camera session to take the vote, particularly where they may need to go back in to get further direction, and

that's an issue that was of some concern to our council.

On the financial disclosure matters, our members of council have indicated, as I believe the city of Kingston did, that they don't have a problem with disclosing their assets and their liabilities. They feel that's quite appropriate. They ask that they be given the same consideration that the provincial members are, in the sense that they feel that the public access—and I know that was one of the questions to the Kingston delegation, the access from the public. They feel that they would like it to be administered the same way and held in the same way that the provincial disclosure statements are held. But other than that, they feel that that's entirely appropriate.

On the conflict-of-interest provisions, we adopt the comments of the city of Kingston. We have the same concerns in Vaughan. Our councillors try very hard. They are very conscientious to ensure that they are putting their minds to whether they have a conflict or not; they seek legal opinions. The removal of the saving provision is of great concern to the council members. I think the suggestion that the commissioner perhaps could provide some guidance would be of great assistance to them, because their fear is that they have no way of protecting themselves. They can go and ask for a legal opinion, and that legal opinion may not be substantiated or may not be upheld by a court, as has been experienced by municipal councillors.

It's of great concern to them what they're going to do to ensure that they're making decisions—because they feel that they don't want to take the easy road, as they see it at times, and declare a conflict because they're not really sure and so they'll declare one. They feel that they're not representing the people who elected them; that they're there to make decisions, to represent the views of the people, and they want to do that. But they also have to be concerned with these provisions and ensure that they are taking all the steps. I think that a provision such as that, which would give them the opportunity to seek an opinion ahead of time, would be of great assistance to them.

One other item, which we're really not prepared to discuss in a lot of detail today because I believe there are going to be further submissions to this committee on it, relates to the Planning Act provisions and it relates specifically to the cash in lieu and the amendments to section 42. That's frequently referred to as—"double-dipping" I believe is the term that people use with it.

Vaughan is one of the municipalities that does have a bylaw passed pursuant to section 42 and does use that. It allows you to collect cash in lieu where the land is valued up to just prior to draft approval, and then where there is development you, under that section, get the additional. You give credit for whatever you've got up to that point and you get the additional for up to prior to building permit. Vaughan feels that in order to provide the level of parkland and the quality of parkland that the community is demanding it is essential that this provision be maintained.

1540

I can advise you that there will be further submissions. I was speaking to representatives from—

**Mr Perruzza:** Are you referring to density boosts after the development has been tentatively approved, that there's a density boost in between that further cash in lieu?

**Mrs Caron:** Yes. I'm aware there is a provision for that where the development is substantial. But we're talking about the same development.

**Mr Perruzza:** But only in the boost scenario.

**The Chair:** Hold on.

**Mr Perruzza:** I'm sorry.

**The Chair:** Let her finish. We'll come around to questioning. Go ahead, please.

**Mrs Caron:** We're just talking about getting that cash in lieu for the additional value that the land increases from just prior to draft approval to just prior to the building permit.

**Mr Perruzza:** The value of land, but not density boost, right?

**Mrs Caron:** No. We're not talking about density boost at this time. What we're talking about is that you calculate the cash in lieu based on the value of the land, and under section 51 that gets you up to just prior to draft approval; under this section 42, that gets you up to just prior to the issuance of the first building permit. That additional money, you give credit for everything you've got; you're not getting it twice. You end up with the value being up to that date. That's when you're usually buying the land. So you're paying the price. In times when values are going up and you're going to perhaps have to be buying parkland for a particular community, you're then able to buy parkland in that area if the values have gone up.

I know that you will be receiving further submissions. The city of Mississauga, which also uses this, is doing some calculations on the serious financial implications that the removal of those provisions will have, and we are working with them in that respect. So other than to bring it to your attention today, further discussion of that will be coming and submissions will be coming to you.

**Mr Somerville:** Those are the highlights of our presentation, and we're quite open to any questions or comments that the committee may have.

**Mr Villeneuve:** Thank you very much for your presentation. When you speak of the decision-making process and people backing away, and I realize Vaughan is a very progressive and rapidly expanding area, do you find quite regularly that—and there's been some publicity of some of the things that have happened in Vaughan; we know that—people have got gun-shy? They would like to be able to take that decision, sit at the table, but they have declared interest in case?

**Mrs Caron:** I think that may be true; yes, I think to some extent, the experiences that they've had. I think just generally, with the thrust of the legislation—and we heard comments earlier about the feelings in some rural municipalities, and while Vaughan is partly rural and partly urban, they do feel there's a general mistrust sometimes of municipal politicians. They don't really feel that that's fair, but they certainly are doing everything in their power to try and change that.

**Mr Villeneuve:** In your opinion, you've seen the being gun-shy, do you think in the long haul that will prevent some very capable people with community interests, and of course with personal interests, from running for office?

**Mrs Caron:** It is a concern, yes. I think it may, particularly if the legislation proceeds as it's written right now, where you don't have the saving provision, where you have nowhere to go to get the kind of advice that you feel you need. I think it very well could, yes.

**Mr Villeneuve:** People run for office because they feel they want to change certain things, and yes, if you happen to be close to a situation and you're wanting to change it, to better it, you may be bettering it for you, but you're bettering it for everyone. Again, you heard the previous submission, which is rather a travesty of sorts because the courts have decided that really, if you're an elected person, you're guilty. To the government, we've got to look at this one very closely.

**Mr Perruzza:** My question was essentially answered when I asked for the clarification. So it's just on the increase that you charge the additional 5%?

**Mrs Caron:** Yes, that's correct.

**Mr Wiseman:** I want to get back to the closed-door meetings. I have to tell you that this is a major contentious issue in Pickering. Over the last four or five weeks, there isn't a day, there isn't a newspaper edition that doesn't go by without a haranguing of this issue.

Here's the problem: You go behind closed doors, you make a decision, you come back out into committee and the councillors all vote on it and it goes through, but behind closed doors there has been debate, there has been discussion, there's been an exchange of points, there's been a total disclosure of the information, and for whatever reasons political, the local councillors do not want to relive that debate in public. So it comes forward. You have the resolution on the floor of council. The chair or the mayor or whoever's in the chair says, "Debate?" Everybody sits there on their hands, because politically they know that it's a contentious issue. Then: "Seeing no debate, all those in favour? Carried." Boom, it's done in 30 seconds. Then second reading, 30 seconds; third reading, done. That's the act, filed and done. People are sitting up there going: "What's going on here? What happened?" Three weeks later, everybody finds out what happened.

**Mr Perruzza:** You can't enact a bylaw the same day as you pass a motion.

**Mr Wiseman:** It slips through.

**Mr Somerville:** May I respond to that?

**Mr Wiseman:** Sure, go ahead.

**Mr Somerville:** I can only speak for the city of Vaughan, I can't speak for other municipalities, but our process is such that, and I think Mrs Caron alluded to it earlier, there's a full week, at minimum, and sometimes more, between the time that the closed meeting takes place and the time that the item, as approved by committee in camera—and I'll be quite candid about that, approved by committee in camera—hits a public agenda. There's another three or four days that the public has



access to the agenda. So it's not a matter of sort of flipping out of committee, walking through a back door into the council chambers, taking the vote and going home.

**Mrs Caron:** It has happened.

**Mr Wiseman:** That's exactly what it is in some municipalities.

**Mr Somerville:** It has happened. We can only refer to the norm within what we think are most of the municipalities. They're trying to make the legislation work. We believe very strongly that there is a need to do some things in camera. We believe there is a need to discuss your labour relations and your personnel matters in camera.

**Mr Wiseman:** That's in the legislation; it allows you to do that.

**Mr Somerville:** We have no dispute with what's to be discussed in camera pursuant to the new legislation. That's a given. We certainly accept that. It's more the process, having the discussion inside, going outside to take a public vote, saying, "Oops."

One of the problems we have is, how do you give direction to your union negotiators by taking a public vote? Generally speaking, you're starting out here with your union, and you're over here and you're working through and both sides are back and forth and back and forth, and then there's a settlement, and generally speaking the final vote, in open public, is when you're ratifying an agreement you've reached with your union and both sides are happy or at least it's a good compromise there. But to have some of these votes and to give direction on land matters, acquisitions and disposals, in a public forum when, can I say, the issue isn't settled? They can be ongoing.

1550

**Mr Wiseman:** That's the conundrum.

**Mr Somerville:** That's our conundrum; that's our difficulty.

**Mr Wiseman:** Personal issues and union negotiating issues, I don't think that's a point, but I'll tell you that the major conflict or the major discussion right now is about land and infrastructure, the use of money in infrastructure programs and how the decision was made. It was all done behind—I'm not going to get involved in the debate, but I'm just saying that the accusations are being made and that the public is perceiving that these decisions are made, and then all of a sudden it hits the floor of the council. It's done so fast that the public doesn't know it. In fact, seven, 10, 14 days, it sometimes doesn't make any difference, depending on how the resolution is worded in the document.

You can sit there and read through it. "This is not a bad resolution." Well, wait a minute. It may have wide-ranging effects on neighbourhoods and people if you're moving a storm-water retention pond or something. It may be that you word it in such a way that they don't find out until it's all done through council and your ability to participate in it is finished.

**Mrs Caron:** If I may, the items that we're talking about are only the ones that you can properly talk about

in camera anyway. We have no difficulty with operating within that limited list. So the act, as drafted, really doesn't help with that situation, because you can still do all your discussion in camera, get all your advice in camera. It's just the vote. So you just come out and take the vote. We don't really see what advantage that is really bringing, because your vote's going to be recorded in the minutes anyway.

Perhaps if there's a requirement that there be a period of time and that any recommendations coming from a closed session appear on a public agenda with a minimum of seven days, or something like that, just to ensure you don't have this coming out and going directly into council, that kind of idea. But they're still going to be discussed in camera and you're still just going to come out and, boom, get the decision.

**Mr Winninger:** We've been discussing a number of sensitive and delicate matters that are better dealt with in camera. But in London, like so many cities, we have a ward system. Not all, but many voters like to know how their ward councillor voted. If indeed the vote takes place behind closed doors, that will remain enshrouded in mystery unless the councillor owns up. So I actually see some palpable benefit in having a vote dealt with in public even though the voters may not, in most cases, know what led up to that vote because that went on behind closed doors.

**Mrs Caron:** But there will be a vote in public, because everything that's done at the in camera session has to be ratified at a public council meeting. So they will have that opportunity to see how their ward member votes at the council meeting.

**Mr Winninger:** Well, I understand your point; I don't necessarily agree.

**The Chair:** We're going to have to move on, I'm sorry. Mr Curling.

**Mr Curling:** Thank you for your presentation. It's rather interesting to see that the province is now making legislation about open or closed meetings.

*Interjection.*

**Mr Curling:** I'll just see if I can get my colleague's attention here, if he would be a bit quiet, because with the echo in here it's kind of difficult for them to hear.

The fact is that the provincial Legislature is much more secretive than your process, because in cabinet not even their own colleagues who are not in cabinet know what goes on, and then when they are whipped into place to vote how they should, some don't even know why. They say, "How are we voting today, yes or no?"

**Mr Perruzza:** You were the only guy with a spine when Peterson was in office.

**Mr Curling:** In your situation—and all parties basically go through that anyhow, and I don't want to be partisan on that, but—

**Ms Carter:** He's talking about the Liberal caucus.

**The Chair:** Let Mr Curling go on. Order, please.

**Mr Curling:** It seems to me I rattled the cages over here. But the fact is that if the provincial government itself or the provincial Legislature could be as open as

you are in some respects, maybe we could see the kind of justification for what they want here, because I find that your situation is much more open than the provincial one. Even with that, though, I still think there are situations in which you should be more open. I think that the parliamentary assistant, whom I have great respect for, said he's listening very carefully; to take those signs into consideration—

**Mr Hayes:** Do you want me to respond?

**Mr Curling:** No—the recognition of what you're going through because he also was a local politician in that respect. I hope they listened in that respect and look at some of the directions and some of the concerns that you have raised. My other point I'd like to raise, and I know I have quite some time, is in regard to the housing situation in the area. I know you are then caught up in the fact that the short time you have in presenting all your points of view, but intensification—I think some of the members you talk about here—is something I would address the government to look at—the draft of this legislation and the draft of the hidden regulations that we haven't got, you know—to take a serious look at this.

**Mr Grandmaître:** How much time?

**Mr Curling:** Go ahead.

**Mr Grandmaître:** How much time?

*Interjections.*

**Mr Wiseman:** On a point of order—

**Mr Grandmaître:** On a point of order on my time? No way.

**The Chair:** Monsieur Grandmaître, continue.

**Mr Grandmaître:** Mr Chair, I have a question to the parliamentary assistant. Let's assume that Bill 163 is in place and I have a conflict of interest. I'm a councillor in Vaughan for instance. I stand up and I declare—

**Mr Perruzza:** They could use you in Vaughan.

**Mr Grandmaître:** Good. I declare my conflict of interest, does the mayor become the judge? Who is really satisfied or who is the judge that my declaration is good enough?

**Mr Hayes:** I would say that it would certainly be the public and if I'm a councillor and standing up and saying, "I'm declaring a conflict of interest"—

**Mr Eddy:** You don't, you declare a pecuniary interest.

**Mr Hayes:** Okay, thank you for the technical advice. I would do that. I don't think that any other—

*Interjections.*

**The Chair:** Hold on, please. Mr Perruzza.

**Mr Grandmaître:** Is this your first day on committee? It's going to be your last.

**The Chair:** Mr Grandmaître—Mr Eddy, please no, please.

*Interjections.*

**Mr Grandmaître:** I did ask the question. Who becomes the judge of my declaration? The mayor?

**Mr Hayes:** No, I think you as an individual—

*Interjection.*

**Mr Hayes:** Whoa, hear me out. Just a second and then I will refer it over to someone else, if staff wants to—if you are a councillor and you and I are sitting on the same council, you declare a pecuniary interest, conflict of interest, should I, as one of the other councillors, as a mayor, decide whether you are or not? I don't think so.

**Mr Grandmaître:** But my question—

**The Chair:** Mr Grandmaître, we're going to need a legal opinion on that, all right? Mr Melville, perhaps?

**Mr Melville:** It's not a legal question.

**Mr Hayes:** It's not a legal question. Do you want to answer it Tom?

**Mr Melville:** Tom Melville, Municipal Affairs. There is no judge as such. You simply submit your declaration and withdraw from participation. Ultimately, the local citizen may be the judge in that if they disagree with it, they can bring an action under the act.

**Mr Grandmaître:** Even after I've declared a conflict of interest, the public can still be the judge of that declaration?

**Mr Hayes:** There's no charge.

**Mr Grandmaître:** What do you mean, no charge?

**Mr Hayes:** You're declaring a conflict. Nobody has charged you.

**Mr Grandmaître:** They can have access. They can have access to my declaration, and also they can read the minutes of city council and they say, "This is not good enough, you should have gone beyond this."

**Mr Melville:** The act only requires that you submit the declaration and then withdraw. The public would judge in the case where there was a failure to submit the declaration.

**Mr Grandmaître:** So even if I declare a conflict of interest, the public is still the judge if this is satisfactory.

**The Chair:** Okay. Thanks very much.

*Interjections.*

**The Chair:** I'm sorry. We've run out of time. Mr Somerville, Ms Caron, we thank you for sharing your concerns with us and thank you for coming today.

1600

DONALD MacDONALD

**The Chair:** We invite Mr Donald MacDonald. Welcome, Mr MacDonald.

**Mr Donald MacDonald:** Thank you. I must apologize for the spelling of your name on the cover.

**The Chair:** That's all right. It happens every now and then.

**Mr MacDonald:** It's important, but it's not part of the presentation.

I have basically geared my comments to Bill 163, and they're to be read basically in conjunction with the bill. Rather than being a long, drawn-out thing, I've just—where I feel there are problems as such or could be better changed as such. Anyway, there are the specific comments and then I have general ones.

Basically, the Planning Act—page 3, section 4, pur-



poses of the act. I have to ask, what is "sustainable economic development"? The "economic" I feel should be removed, as the wording currently places the emphasis on economic considerations, which are important. However, so are other considerations.

Also on page 3, clause (b) under purposes of the act, I believe the word "led" should be replaced by "regulated"—"to provide for a land use planning system led by provincial policy." Yes, provincial policy will lead it. However, it must be regulated also by provincial policy. It must conform to the provincial policy; be consistent with. So the policy must be followed, I feel.

On page 4, clause 2(m)—at the end of (m), "the coordination of planning activities of public bodies including all levels of government." I know this is a provincial Legislature; however, we are vastly affected by what takes place in the federal government. Somehow they must be involved too, right down to your local beginning government. It has to be all levels, I feel.

Clause 2(p): "the appropriate location of growth and development." "As per section 3 policy statements," I would suggest should be added on to that one. That would give more direction within the province. If there's an area of good agricultural land, a city maybe should not expand that way. It should be directed to some other city rather than that specific city. There's no God-given thing that a city must grow, I feel. Sure, cities must grow, but not a specific city. Maybe certain cities are limited; other ones do not have valuable resources surrounding them that it would hurt society to have them used for urban development as such.

Under section 3, policy statements, page 12, subsection 17(14), delete the words "as the council considers may have an interest in the plan." Under the Charter of Rights, everybody is supposed to be equal. It's a condition that exists; it's not something that's earned. A council for example can—if this wording is allowed, a person who has a very great concern, who may not be a resident of that specific municipality, then would be subject to being eliminated. However, the municipality may be contrary to provincial policy statements. So, therefore, someone not necessarily within the municipality would be limited to have anything to do about a provincial matter.

On page 15, subsection 17(31), written explanation by the minister: "If the approval authority refuses to refer all or part of a proposed decision to the municipal board, the approval authority shall provide a written explanation for the refusal." I suggest to add "to the requester, and the Minister of Municipal Affairs who must also confirm the refusal." This gives the power to the granter, the approval authority, and if that approval authority—there could be instances where the minister may override the approval authority, I feel. It may be that they don't conform to provincial policy.

Now we jump way over to page 48, subsection 51.1(4), the determination of value for purposes of land. By whom and how will the value be determined? That one should be stipulated.

Now we switch over to the Topsoil Preservation Act. As a general comment, the Topsoil Preservation Act should become a policy statement under section 3 of the

Planning Act, with specifics to be followed in the zoning-development process, I feel. Topsoil seems to be a good commodity. Developers feel it's expendable. Rather than pile it up or use it elsewhere, it's buried underneath and then more is transported in from offsite. How much farm land do we have to lose in the province? There shouldn't be any need to destroy farm land to obtain topsoil. There should be topsoil available from all sites if it's properly stored and stockpiled. If there is excess, trucks are hauling aggregate one way; maybe they can haul topsoil back the other way, who knows, but I think that should be subject to a future policy statement under section 3.

The Ontario Planning and Development Act: This act is appropriate, especially in new development areas, ie, urban versus rural-agricultural. One caution is that the entire plan area must be dealt with in a comprehensive approach, or a cumulative effect of problems on resources may not be dealt with in the most suitable manner.

In the city of Orillia annex area, the secondary plan area, it's my experience that they're trying to piecemeal the secondary plan with portions of it rather than the whole plan. There's a provincial park involved, there's a floodplain involved, but these areas are not being dealt with. It's just a portion of the planning area. It should be dealt with as a whole, I feel.

General comments: These go back to the front of Bill 163, which is basically the explanatory aspects.

1. As I mentioned before, the Charter of Rights; everyone is equal, minister, ministry, municipality and individual. Rules must be applicable to everyone being equal.

4. Official plans must conform to provincial policy. That's basically "shall be consistent with."

8. Basic planning principles are to be adopted and used. I've sat at OMB hearings which last upwards of a month, and we're hearing about rubber in the environment. The board member is bored, the public is bored. It's a very costly process.

A board hearing is not a commission. There are basic planning principles. Built-up areas, pavement areas I call them, where there's roads and roofs, they have a greater amount of runoff every year than treed areas or agricultural areas. Those are basic planning principles. Why do we have to explore them all over and over again at OMB hearings? It seems ridiculously costly to me.

1610

9. If the complainant—I have to question complainant. I know a great amount of OMB hearings are "not in my backyard." People just don't like them, that sort of thing. Yes, that occurs a lot; however, it's not always the case. There are provincial resources, various resources and various planning reasons for requesting a referral. Whether they are valid or not, how valid they are is what the board determines. I think that should be possibly replaced with a requester. If the complainant or requester does provide sufficient planning reason, the board will be required to hear. Planning reason, ie provincial policy, not conforming to provincial policy. This goes for the minister too. The minister can request a hearing, as far as that goes, or deny.

12. What is a minor variance? I'd like to have a definition of it, please; it should be required.

And I have some new ones—it goes only to 18.

19. Enforcement: If an individual or ministry cites an illegal use of a property zoning to the municipality and is ignored, then after an appropriate time, ie council inaction or denial, the ministry or person has the right to refer the matter to the OMB for a hearing of the matter. This should be up to 60 days, and specifically referring to zoning infractions, improper use of zoned or designated land.

If the land is designated agricultural—however, there's boat storage takes place in the barn. I tried to buy a property one time. I didn't know I was competing with somebody who was going to use this turkey barn for boat storage. That's an illegal use. It's not recognized in the official plan; it's not recognized in the zoning, but there it is. I have to spend a fortune on lawyers to do anything. If I request council, quite often you're just laughed at. That happened in Oro.

**The Acting Chair (Mr Paul R. Johnson):** Mr MacDonald, I just wanted to inform you that you've actually used up all your allotted time but I know that the members of the committee want to hear the rest of your presentation, so I just bring this to your attention so you might hurry along.

**Mr MacDonald:** Right, I'll just be brief and get on with it. The board decision may order cease and desist, levy fines—very high—especially for predevelopment site destruction of a proposed development that has not received final approval.

This has been one of the most major lacking aspects in the use of land. Literally, fortunes are spent on the planning process while others use without approval. I suggest that the process would be similar to the proposed subsection 20(7) on page 24.

20. Urban versus rural: Infrastructures are different, as should be environments. Development of a subdivision adjacent to a wetland in a rural municipality is an infringement on the wetland complex while some wetlands within a city are sometimes so fragmented and disrupted that their protection is a lost cause, while others may not be. The distinction of rural versus urban must be recognized in municipalities.

21. Systems: The integrated comprehensiveness of policy statements and the proposed changes to the Planning Act and other acts must work in a complete system that earns the respect of the majority of individuals and, in turn, respects the individual. However, might or numbers are not to take precedence over being morally or legally correct.

**The Acting Chair:** Thank you very much, Mr MacDonald. We don't have time for questions, but your presentation was very direct and all the members heard your presentation and have a copy as well.

GEORGIAN TRIANGLE DEVELOPMENT INSTITUTE

**The Acting Chair:** The next presentation is by the Georgian Triangle Development Institute, Mr Colin Travis, president, and Mr Dave Slade, vice-president.

**Mr Colin Travis:** My name is Colin Travis and to

my right is David Slade. Together we are representing the Georgian Triangle Development Institute as, respectively, the president and vice-president.

For those unfamiliar with the institute, we have included some background material with our submission, appended as the last page.

First, we would like to thank you for the opportunity to present our views before you. We're aware of your time constraints, constraints imposed by an extremely busy schedule, and we have made our submission as brief as possible. On that note, I'd like to ask David to proceed with our submission.

**Mr David Slade:** Thank you again for giving us the opportunity. Just briefly, the Georgian Triangle Development Institute is a group of professionals based out of Collingwood and area, professionals in the form of lawyers, planners and engineering firms all involved in the development industry in that particular area. We came together approximately three years ago as information for ourselves and also as a forum to speak out on issues such as the issues brought on by Bill 163. On that basis, we have given a submission and I'd like to just read it into the record.

The Georgian Triangle Development Institute has followed the changes of the Planning Act since the inception of the Commission on Planning and Development Reform in Ontario, basically what we all call the Sewell commission. This involved several presentations directly made to the Sewell commission and a special hosting of the commission by the institute in July 1992. At that time, we hosted the committee and we had approximately about 150 people who were part of our day, basically people within the area and political representation from the area also.

It is not our intention to review the proposed changes point by point—we just feel it's impossible, there's so much in it—but rather to illustrate the need for a very cautious approach to these dramatic proposals, and we do consider these to be very dramatic, in many cases positive, but in many cases we have concerns and we really want you to carefully look at this.

1620

These proposals begin with the redefinition of the purpose of the Planning Act. We respect the intentions outlined within the purpose of the Planning Act. However, the whole focus of our concerns can be summarized by clause (b) of section 4.1 of Bill 163. Subsection 4.1.1(b) states that one of the purposes of the act is "to provide for a land use planning system led by provincial policy," and we underline "led by provincial policy" because I think that's the whole focus. This is an extremely large and diverse planning jurisdiction, and to have one set of provincial policies universally applied is neither appropriate nor feasible. However, this approach is now proposed to be enshrined within the Planning Act and the whole focus of the reforms support this direction.

Accordingly, the committee should review the repercussions of this approach and ensure that regional diversity can and will be recognized in future planning policy.



An extremely important change has been proposed by Bill 163 to ensure all planning direction "shall be consistent with" provincial policy statements. The existing Planning Act had a similar clause. However, the wording required all planning decisions "to have regard for" provincial policy statements. It would appear that the purpose of this change is to remove the flexibility and the interpretative abilities of local planning jurisdictions. Why is such a drastic revision necessary to the Planning Act? All planning authorities have been required to have regard to those provincial policy statements and we have not seen any justification for the proposed changes to the Planning Act. If there has been a problem in the last 10 years, it has been as a result of the province's inability to take advantage of the reasonable provisions already in the existing Planning Act.

Interpretation of provincial policy statements will most likely be from senior bureaucrats, and the ability for local elected officials to plan appropriately for their communities will be lost. Provincial policy statements, as proposed, will result in less flexibility at the local level. Therefore, we request the committee to seek adequate justification for the change to "shall be consistent with." Again, we followed Sewell's work for the last two and a half years and we are not aware of anything in his documentation to suggest that there was a problem with the previous wording. We'd like to know why, because we think there's a major difference in the terminology, "shall have regard for" and the terminology "shall be consistent with."

Because of Bill 163 and this committee's work, another important aspect of planning is raised, and that is the inclusion of well over 60 new provincial policies. These policies will be required to be implemented by local planning jurisdictions and must be implemented in a way that will be consistent with the provincial policies. We are very concerned the repercussions of these new provincial policy statements will have on planning within the province of Ontario. Many of the provincial policies will be a beneficial planning basis for the future. However, our concerns arise from not knowing the ultimate repercussions.

The sheer magnitude of the number of provincial policies to be established concerns us. Under the existing Planning Act, four provincial policy statements and the implementing guidelines have been produced in the last 10 years. Extensive review occurred and was necessary for these provincial policy statements prior to adoption of these policies. Again, it's impossible for us to assess the repercussions of these policies due to the sheer magnitude.

We've got one policy statement and I think you're all familiar with it, the wetlands policy statements that occurred within the last 10 years.

**Mr Wiseman:** June 1992.

**Mr Slade:** That's right. The policy statements are 15 pages long and the guidelines are at least 125 pages long. We knew what was going on there and we all participated in that and I think we ended up with a very good direction. But our concern is with the provincial policy statements that are occurring, or will occur. They're

going to be there and we really don't know the repercussions of those, because we don't know the guidelines that go along with them. A lot of them are just one-line policy statements that are going to be open to a lot of interpretation.

In addition, it is next to impossible to fully assess the policies in the absence of implementing guidelines. As an example, clause 13 of section B, economic, community development and infrastructure policies, states, "Policies and decisions regarding development and infrastructure should conserve significant landscapes, vistas, and ridge lines." That could be wide open for interpretation.

What are the consequences of this policy statement? Are we to conserve 5%, 10%, 50% of the province, as it may be defined as an area of significant landscape, vista or ridge line? We must have the implementing guidelines to accompany this provincial policy statement or you, the committee, will not know the resulting impact of approving these policy statements. Who will determine what is significant, a provincial bureaucrat or an elected official? It would appear, the way the Planning Act is being revised, that the decision will be made by the senior bureaucrat.

This leads us to streamlining of the planning process, which has been a strong focus of the Sewell commission's stated mandate. There have been minor modifications within Bill 163 to achieve this streamlining; however, we are extremely concerned that the establishment of more than 60 new provincial policies which are untested will only lead to chaos and delay within the development community.

When the contents of a statement are questioned, the only option is to refer the matter to the courts or the Ontario Municipal Board. This will only lead to substantial delays of implementation of these guidelines. The more knowledge presented now through the establishment of appropriate guidelines will lead us to a more expeditious development and approval process in the future.

In summary, we only request that the committee proceed with caution and knowledge of the repercussions of approval of Bill 163 and the proposed set of comprehensive provincial policy statements. We would advocate that the committee recommend to the minister that he establish a set of comprehensive guidelines for all proposed provincial policy statements and to prepare an environmental assessment of the repercussions of these provincial policy statements.

In summary, we'd also ask that we have the opportunity to provide a written submission to you in regard to a more detailed response to Bill 163 prior to your committee, I believe, going into a clause-by-clause review of Bill 163.

**The Chair:** Thank you. You can do that, the last question you raised there.

**Mr Perruzza:** Thank you very much. I enjoyed a lot of your observations with respect to the bill, but my question really relates to something that was raised earlier by the people who were here from Vaughan. It occurred to me when they were speaking, and they were talking about the integrity portion of the legislation, it's my

understanding that the mayor for Vaughan, Lorna Jackson, is going to be running for the Conservative Party some time, I guess, in the spring or in the fall next year; however, she's not telling anyone. It's my understanding that she's also running in the municipal election which is coming up in November.

My question to them, and I wanted to ask the other people, is that I'd just like to get some sense of what the general public thinks of this process.

**Mr Eddy:** Mr Chairman, this has nothing to do with Bill 163 whatsoever.

**Mr Perruzza:** Would you let me ask the—you don't know what I'm going to ask, right? Don't jump out of your seat. I didn't jump out of my seat when you—

**Interjection:** Okay, Anthony, ask the question.

**Mr Perruzza:** My question is, should municipal politicians resign their positions when they plan to run for other office? What do you think of that?

**Mr Grandmaitre:** Say "maybe."

**Mr Slade:** I don't feel qualified to answer that.

**Mr Eddy:** Mr Chair, does this question have anything to do with—

**The Chair:** Mr Eddy, they can answer the question or not.

**Mr Eddy:** But on a point of information—

**The Chair:** I'm not sure it's related to any of the things that we have dealt with so far or that it is contained within the proposed bill, but if they wanted to respond to that question, they could; if not, they don't have to.

**Mr Slade:** I think we'll decline. We certainly are not prepared on that field of it.

**The Chair:** Thank you. Mr Perruzza, any further questions.

**Mr Perruzza:** No, that was it.

1630

**Mr Wiseman:** I don't know if you've been in the room before when I've gone down this road on the "shall have regard for" as opposed to "will be consistent with." It seems to me that what I've heard from my constituents, both developers and community groups, is that they want clarity. In fact, when I was on the public accounts committee on Tuesday, the committee was considering the whole question of governance. The major issue about governance, from what was being discussed, is this whole issue of maybe you can do it, maybe you can't do it. It depends on who you are, it depends on where you are, it depends on who's on council, it depends on what people say.

So the interpretations of the Planning Act, the Municipal Act and all of the other acts that apply to the subdivisions and their creation are really quite iffy. In my riding there's a lot of development, because the population of my riding since 1987 has doubled, easily doubled. There's 133,000 people there and in 1987 I think there were about 50,000 people. Nothing gets the developers more upset than going into council and being told by council on one night that they can do this and then, having another developer come in the next night, "No,

you can't do that." Yet in their minds it's exactly the same thing. In other words, the council was having regard to the provincial policy with one and, having had regard for it, in another says, "You don't have to comply with it."

This is something that really, really irritates residents and ratepayers and environmentalists and me. My own feeling is that even "shall be consistent with" is too weak. I would prefer to see something—Save the Rouge came in and said it should be "shall be consistent with and conform to." Others have come in and said that it should be "will conform to." I think everybody will benefit—developer, ratepayer and council—from a policy statement that doesn't have "maybe" in it.

I think that's why "shall be consistent with"—I think it's important that we make sure that we're as clear as we possibly can be about what can happen and what can't happen. It should state, "You will not develop on class 1, 2 and 3 farm land," period, not, "You will have regard" to that statement," but, "You can't."

**Mr Slade:** I agree with you wholeheartedly that we need rules to follow. In doing that, right there, we'll streamline. There'll be less dilly-dallying, we'll know what the rules are and can get on with it. But where should those rules be? Should they be through vague provincial policy statements? No, I think the direction of the Planning Act says that they will be outlined in official plans at the local municipal level. Those official plans should be respected.

**Mr Wiseman:** But they aren't.

**Mr Slade:** That's what we've got to firm up. They should be respected. As guidance in the preparation of those official plans, we have a set of provincial policy statements. We don't disagree with that. Give us that direction, but give the local municipalities the ability to interpret those locally, and when that official plan is in place, don't deviate from it. If it's designated, then that's the rule. If it's not, then that's the rule too. Everybody wants a fair field. We're talking about which document should give me that direction.

**Mr Wiseman:** Not to be argumentative, but—

**The Chair:** Sorry, we ran out of time. Mr Eddy.

**Mr Wiseman:** I've just been cut off.

**Mr Eddy:** I'd gladly give the member some of my time, because I'd follow up on his questioning.

Yes, there's great argument. I hope you don't hope to take all the controversy out of the planning process with what you're suggesting, because that may never happen. The words "have regard to"—unfortunately, it's interpreted that people hold up the book and say, "We've looked at 'have regard to.'" The government says, "be consistent with", pointing out that it does give flexibility, and I think you disagree with that.

**Mr Slade:** Yes.

**Mr Eddy:** I disagree with it. I think it will prove that there isn't any flexibility, that it's hard-line stuff, very much like, I believe, "conform to." Maybe that's the way some municipalities would like to have it. Maybe it's the way some of the members here would like to have it. I don't see it that way, coming from rural Ontario.



We had a new suggestion today, and I'd like your opinion on it. A group came forward and said, "We would like the words changed from 'be consistent with' to 'maintain the spirit and intent of' provincial policies." I thought that was great. It seemed to me it hit the right note and that it would be better than what's being proposed and it would do what you say: Have the policies, but let the local areas decide what they're going to do. We're facing two-tier planning in Ontario, upper tier and lower tier, so, God, there are going to be enough rules locally. Would you comment?

**Mr Slade:** I agree with you. I think that's the focus we're coming at, that we have to have planning. This question is, where should the planning come from? Yes, maybe the province does have the ability to give us some direction, but remember, it's an extremely diverse planning area. To say the province of Ontario is all the same, it's not.

**Mr Eddy:** Municipalities are diverse. Individual municipalities are very diverse.

**Mr Slade:** We have countries much smaller than the province of Ontario, and to set more than 60 provincial policy statements generally the same throughout the province is a great difficulty. Where the planning really happens is at that local municipal level, county level or regional level. Let them have some—and I hate to use the word all the time—flexibility to interpret. I like the terminology you came up with.

**Mr Eddy:** Well, it was presented—

**Mr Slade:** I don't think there was any problem with the terminology that was in the previous Planning Act. All we ask you as a committee is, where's the background material that said there was a problem before, in the terminology that was established before? Just look at that aspect.

**Mr Eddy:** I note your suggestion to "proceed with caution and knowledge of the repercussions of approval of Bill 163," but unfortunately you don't know the repercussions until after the fact unless we listen to people like you.

**Mr Slade:** I was lengthily involved, and Colin was lengthily involved, in the review of the wetland policy statements and the guidelines that went with them. So we knew the repercussions of this. It identified a lot of the wetlands throughout Ontario. We knew what's going on. I honestly don't know the repercussions of scenic viewshed, whatever, throughout Ontario. That may be tremendously used. Whether it's through a political body or through a ratepayers' group or through whatever, that can be abused if we don't know what the guidelines are to go along with that.

**Mr Eddy:** Unfortunately, some of the other policies have not been developed that way, we're told, and that's unfortunate, and there are going to be probably many more.

**Mr Villeneuve:** Gentlemen, thank you. "Shall be consistent with" takes away a lot of the autonomy that local councils—I represent an area with 23 municipalities, average 2,500 population, very much rural.

Wetlands you've touched on. You're reasonably happy

with wetlands. I can bring you to hundreds of land owners who are very unhappy with wetlands. The planning on this designation of wetlands, to me, left a great deal to be desired. We had a group of people in your profession yesterday, or a spokesperson for planners who were quite happy with Bill 163. You're expressing some concerns, the long-run concerns on Bill 163, and we really appreciate that.

But back to the wetlands. The gentleman before you definitely said there should be policy for the rural portions of Ontario and for the urban, more populated areas of Ontario. Just your general comments: You're happy with the wetlands. Tell me what you're happy about. I'm not happy.

**Mr Slade:** I'm happy with the process of establishing these. I didn't say I'm happy with the content, okay?

**Mr Villeneuve:** The process? Like the vegetation, I don't even think that people went on the farms. They went by vegetation.

**Mr Slade:** I'm much more happy with the process of devising this than what I've seen with these new 60 policy statements. So I'm showing you: Here's a process. Whether you're happy with the way it worked or not, certainly there has to be a lot more definition. I've got clients and I've got work that I'm working on now where I'm not too sure how it ever got designated, but at least there's a process of guidelines in here for me to review it, to maybe remove it, whatever. I just have no idea what's going to go on with a lot of these new provincial policy statements on it. That's why I bring it up.

**Mr Villeneuve:** Those are the concerns you've expressed. I thank you.

**The Chair:** We thank you for coming and we appreciate your submission.

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#### PIGEON LAKE ENVIRONMENTAL ASSOCIATION

**The Chair:** We invite Pigeon Lake Environmental Association Inc, Mr Dan Kennaley. Welcome to this committee. Please begin any time you're ready.

**Mr Dan Kennaley:** Ladies and gentlemen, I'm pleased to be here on behalf of the Pigeon Lake Environmental Association. I think I've been given 15 minutes to speak to the group and I probably am not going to take that long. I probably have five minutes, so I can tell a few jokes if you want.

**Mr Wiseman:** Only if they're politically correct.

**The Chair:** Better not to tell them.

**Mr Kennaley:** That's the problem. I'm not sure I have any politically correct ones to tell today. I'm sure you've had a long day, so I'll get down to business.

First of all, the Pigeon Lake Environmental Association Inc, or PLEA, as it is more commonly known, is an organization of lake residents and others who are dedicated to the goal of contributing to the maintenance of a healthy and aesthetically pleasing environment in the Pigeon Lake watershed. Pigeon Lake is a lake that's located about probably 10 miles west of here, between Peterborough and Lindsay. It's about 15 miles long. It's in the very south end. It's an agriculturally dominated

watershed. The lake is shallow and weedy. At the north end, you're actually up into the Canadian Shield and the lake becomes deep and with a lot less weeds. We have about 120 members around the lake.

PLEA acknowledges and appreciates the increased concern for the environment that is reflected in Bill 163. We feel, however, that the legislation requires at least one change so as to better provide for protection of the environment. If you've already decided to put the appeal of minor variances back into Bill 163, I can stop here and go home.

The change that we're advocating isn't actually the return of appeals of minor variance, but it relates to the elimination of the appeal of minor variance applications to the Ontario Municipal Board. The problem with this change is that minor variances have been used in the past to allow new uses in zones, and even in official plan designations, where they are otherwise not permitted. I've given to the secretary a series of Ontario Municipal Board reports which document this surprising interpretation of law.

PLEA is concerned that local municipal councils with the final say on minor variances will use such variances to undermine the environmental protection otherwise afforded by way of Bill 163. PLEA is very concerned about the possibility of a hotel, a marina or a commercial cottage resort being permitted by way of a minor variance in a zone that otherwise only permits perhaps residential uses or perhaps even open-space uses. Unfortunately, PLEA's experience with municipal councils in the past suggests that they are capable of subverting good land use planning in this manner.

Rather than asking that the appeal of minor variances be incorporated back into Bill 163, PLEA would like to suggest that the province further modify Section 45 of the Planning Act by adding a sentence to subsection 45(2) that would indicate that, "Notwithstanding the generality of the foregoing, a new use shall not be permitted in any zone or in any official plan designation by way of a minor variance," or something along those lines.

That, Mr Chairman, is the only concern, I guess, that the Pigeon Lake Environmental Association has with Bill 163.

**Mr Villeneuve:** I think you make an interesting suggestion, to attempt to identify minor variances and what is a minor variance and the extent of minor variances. I think any new use would certainly be part or probably should be part of the definition of a "minor variance." I guess a new use would not be a minor variance, although it's been used that way before.

**Mr Kennaley:** Yes, that's certainly our concern. Around the lake and in an environmentally sensitive area, I think the implications are particularly serious if certain types of new uses are added by way of minor variance. As it stands right now, there is no appeal, no remedy to the final say that council has with respect to minor variances.

**Mr Villeneuve:** Do most of the residents around Pigeon Lake belong to the association of cottagers?

**Mr Kennaley:** No. The lake is a very developed lake,

numerous subdivisions around it, so no.

**Mr Villeneuve:** Most of them are permanent residents?

**Mr Kennaley:** There is some backshore development that is predominantly permanent. The immediate onshore development is probably still mostly seasonal, although there certainly have been lots of conversions taking place. It's a lake environment that is very stressed already, and it's one of the reasons why PLEA exists.

**Mr Perruzza:** Why do you feel it's important to be able to appeal minor variances to the Ontario Municipal Board and why do you feel that the municipal council wouldn't be able to make the same kind of determination as the OMB if the appeal was to the council?

**Mr Kennaley:** Well, I guess again it isn't so much that. We're not necessarily asking for the appeal to be put back into the act; what we are asking for is for limitations to be put on the ability of municipal councils to grant new uses by way of a minor variance. Something that's not permitted by the zoning bylaw or by the official plan designation on a property could still, under Bill 163, be permitted by way of a minor variance, and there's no recourse. We don't have anybody to go to.

I'm not suggesting that the appeal be returned, but if there was an appeal to the Ontario Municipal Board and PLEA or any other organization was concerned about the environmental impact of allowing a new use, then we could go to the board and argue our case, and if the board was convinced that, yes, there was going to be a negative environmental impact, they would not allow the minor variance. But as it stands right now, it can't go anywhere other than I guess to the courts by way of an injunction or some other kind of action, but that's a very expensive process, a very expensive way to do things from the perspective of a rather poor community organization like Pigeon Lake Environmental Association.

**Mr Perruzza:** So what you're saying is you don't trust the council.

**Mr Kennaley:** Not all councils; not all the time.

**The Chair:** All right. Thank you. Mr Wiseman. I'm sorry, is your question this long or this long?

**Mr Wiseman:** Neither.

**The Chair:** Just a short question, please.

**Mr Wiseman:** To do what you're saying, if all of the counties and municipalities have official plans, in order to do that, they would need an official plan amendment, and that would be appealable to the Ontario Municipal Board. I wonder how they could even think about trying to squeeze through a use change like that on a minor variance. I mean, that would be something that even some of the councils I know wouldn't do.

**Mr Kennaley:** I was surprised when I came across this interpretation of the concept of a minor variance which has been made in the past by the Ontario Municipal Board, and that's what those cases are all about. There are quite a few of them there. In those cases, the Ontario Municipal Board decided that adding a new use despite the fact that it's not permitted by the zoning bylaw in some instances or by the official plan nevertheless could be considered a minor variance given the right



set of circumstances. I do have some faith in the Ontario Municipal Board making that kind of decision, but I'm not sure I have the same faith in municipal councils making that sort of decision. In my experience with municipal councils, sometimes the environment is not given the weight that it deserves, I guess.

**Mr Wiseman:** Could I ask the clerk if we could see those at some point?

**The Chair:** Okay.

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**Mr Grandmaître:** I'd like to get your definition, the one that you're proposing for minor variances. In other words, you would abolish minor variances if the official plan was affected or the zoning bylaw was affected by that minor variance?

**Mr Kennaley:** No. All I'm suggesting—I think most people's idea of minor variances involves things like changes to side yards and front yards, those kinds of examples, and those are the examples referred to in this document here where it talks about taking away the appeal process. I was really surprised. Those are certainly the kinds of minor variances I'm familiar with as well, and I was really surprised when it was shown to me that in fact the Ontario Municipal Board had allowed new uses, uses not permitted by the zoning, not permitted by the current official plan designation, and called them minor variances.

**Mr Eddy:** The OMB doesn't follow anybody's rules.

**Mr Kennaley:** No, that may be true. In these instances, there's justification, I think, for the board's decisions. But what it does is it establishes the precedent—not the precedent, but the principle—that new uses can be contemplated by way of minor variances. Now, with councils having the sole responsibility for making those kinds of decisions under Bill 163, I'm just worried, knowing sometimes how municipal councils are not necessarily very pro-environment, that bad decisions are going to result, bad minor variance decisions are going to result.

**Mr Grandmaître:** You see, my argument is that

some minor variances can—not destroy, but affect a zoning bylaw or an official plan. This is why I'd like to see the appeal process retained, for the simple reason that these minor variances can be major to an official plan or a zoning bylaw, and that's why it should be maintained. Do you agree with me?

**Mr Kennaley:** I think PLEA would also welcome a return of an appeal of minor variances through the Planning Act, a return to Bill 163, because you're right. Under certain circumstances, you know—for instance, one of the common features of bylaws in this area, especially around lakes, is a setback from the lake. If a variance is granted by a council to greatly reduce that setback, it can have major implications for the lake environment. But by the same token, I have to acknowledge that many minor variances—minor reduction of a side yard and so forth—aren't that big a deal that they necessarily have to go to the Ontario Municipal Board. So rather than advocating flat out that the appeal power should be retained, we're suggesting as a compromise that at the very least a limitation be put into Bill 163 that would prevent these new uses from being permitted by way of a minor variance.

**Mr Grandmaître:** That's why we need regulations.

**The Chair:** Monsieur Grandmaître, you've run out of time. I'm sorry.

**Mr Grandmaître:** And I've run out of gas. Tomorrow we'll be in Belleville—

*Interjection.*

**The Chair:** Your mike is off. Mr Kennaley, we thank you very much for participating in these hearings.

**The Chair:** Just a few reminders to the members with respect to tomorrow and today. With respect to tomorrow, we're staying in Belleville but we're meeting in North Fredericksburgh. If someone needs directions, those people who have cars, please talk to Donna, but we will be adjourned until 10 o'clock tomorrow morning in North Fredericksburgh, and the bus leaves from the hotel tomorrow at 9.

*The committee adjourned at 1656.*







## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**\*Chair / Président:** Marchese, Rosario (Fort York ND)

**Vice-Chair / Vice-Président:** Harrington, Margaret H. (Niagara Falls ND)

**\*Acting Chair / Président suppléant:** Johnson, Paul R. (Prince Edward-Lennox-South Hastings/  
Prince Edward-Lennox-Hastings-Sud ND)

Bisson, Gilles (Cochrane South/-Sud ND)

Chiarelli, Robert (Ottawa West/-Ouest L)

**\*Curling, Alvin** (Scarborough North/-Nord L)

Haeck, Christel (St Catharines-Brock ND)

Harnick, Charles (Willowdale PC)

Malkowski, Gary (York East/-Est ND)

Murphy, Tim (St George-St David L)

Tilson, David (Dufferin-Peel PC)

**\*Wininger, David** (London South/-Sud ND)

*\*In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Carter, Jenny (Peterborough ND) for Ms Harrington

Eddy, Ron (Brant-Haldimand L) for Mr Murphy

Grandmaître, Bernard (Ottawa East/-Est L) for Mr Chiarelli

Hayes, Pat (Essex-Kent ND) for Mr Malkowski

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/ Prince Edward-Lennox-Hastings-Sud ND)  
for Mr Gary Wilson

McLean, Allan K. (Simcoe East/-Est PC) for Mr Tilson

Perruzza, Anthony (Downsview ND) for Mr Bisson

Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC) for Mr Harnick

Wiseman, Jim (Durham West/-Ouest ND) for Ms Haeck

### **Also taking part / Autres participants et participantes:**

Ministry of Municipal Affairs:

Boeckner, Pat, manager, plans administration branch

Dewar, Diana, manager, municipal planning policy branch

Hayes, Pat, parliamentary assistant to minister

Jones, Paul, manager, local government policy branch

Melville, Tom, legal counsel

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Stobo, Carolyn, research officer, Legislative Research Service



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**Legislative Assembly  
of Ontario**

Third Session, 35th Parliament

**Assemblée législative  
de l'Ontario**

Troisième session, 35<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

Friday 9 September 1994

**Journal  
des débats  
(Hansard)**

Vendredi 9 septembre 1994

**Standing committee on  
administration of justice**

**Comité permanent de  
l'administration de la justice**

**Planning and Municipal Statute Law  
Amendment Act, 1994**

**Loi de 1994 modifiant des lois  
en ce qui concerne l'aménagement  
du territoire et des municipalités**

Chair: Rosario Marchese  
Clerk: Donna Bryce



Président : Rosario Marchese  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICE

Friday 9 September 1994

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Vendredi 9 septembre 1994

*The committee met at 1002 in the municipal offices, North Fredericksburgh.*

PLANNING AND MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT DES LOIS  
EN CE QUI CONCERNE L'AMÉNAGEMENT  
DU TERRITOIRE ET DES MUNICIPALITÉS

Consideration of Bill 163, An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes related to planning and municipal matters / Projet de loi 163, Loi révisant la Loi sur la planification et l'aménagement du territoire de l'Ontario, la Loi sur les conflits d'intérêts municipaux, et modifiant la Loi sur l'aménagement du territoire et la Loi sur les municipalités et modifiant d'autres lois touchant des questions relatives à l'aménagement et aux municipalités.

**The Chair (Mr Rosario Marchese):** Call the meeting to order, please. Before calling the first deputant, we'd like to have Mr Johnson greet us here. Mr Johnson, please do that.

**Mr Paul R. Johnson (Prince Edward-Lennox-South Hastings):** Thank you, Mr Marchese.

**Mr Ron Eddy (Brant-Haldimand):** May I ask why? What's happening? I don't know.

**Mr Paul Johnson:** Mr Eddy, if I can answer, if we were in your riding, I have no doubt that the Chair would ask you if you would just like to greet your fellow colleagues of the Legislature.

**Mr Eddy:** It's never happened in any of the other meetings.

**Mr Paul Johnson:** Oh, it's happened on many occasions in my opportunities of chairing committees.

**Mr Eddy:** I have no objections.

**The Chair:** It's not a big deal, Mr Eddy.

**Mr Eddy:** No, I didn't know what was happening, that's all.

**Mr Noble Villeneuve (S-D-G & East Grenville):** Can we question the deputant when it's done?

**Mr Paul Johnson:** I appreciate this very short opportunity, as I guess I've already said, to welcome the standing committee on administration of justice to my riding, and indeed to a part of rural Ontario where committees don't often come, and on probably the first time a committee has ever been to the hall in North Fredericksburgh township.

I simply want to take this very, very short opportunity

at the beginning of these proceedings to indeed welcome my colleagues to this venue, and for all of us who come from rural Ontario as members of the Legislature, and we represent all parties, we certainly collectively advocate on behalf of rural Ontario. I was indeed pleased that the committee chose to come to my riding and have at least one hearing in rural Ontario and in North Fredericksburgh. I thank you very much.

VAN MEER LTD

**The Chair:** We are ready for our first deputant, Van Meer Ltd, Mr Arnold Vandermeer, president. Welcome, Mr Vandermeer. You have a half an hour for your presentation. Please leave as much time as possible for the members to ask you questions.

**Mr Arnold Vandermeer:** I don't think I will be a full half-hour. But I want to bring some points across and appreciate the opportunity to let me speak to your committee. As you said, my name is Arnold Vandermeer. I'm president of Van Meer Ltd.

I am also a director of the Quinte Home Builders' Association, which sort of operates around the Bay of Quinte area, centring around Belleville. I am on their liaison committee. I am also a member of the Ontario Home Builders' Association. I'm on the land development committee and a member of the Canadian Home Builders' Association. I'm a professional engineer. I've been practising for over 23 years in the land development business, from construction to design to acting as land development manager for small builders and minor land owners, let's say, who are providing residential housing to the area.

I also do some work in regard to the development of industrial and commercial lands. I'm also a member on the implementation advisory committee of the Bay of Quinte remedial action plan and also working on their land use planning working group. So I'm involved with a fair bit of the effects of the development industry and feel that some of the changes that are suggested in your Planning Act being brought forth should have some improvements or give consideration to our area.

Basically with our industry certainty is a big issue. We have to make commitments. That has always been the problem of finalizing the development process to be able to bring on affordable housing. When commitments are to be made to banks to pay back mortgages or payments of loans on lands through the development process, any delays set up alarms, and that's what we've been dealing with. I find that one of the concerns I have been with what's being suggested as the lapsing of the draft plans of



subdivision was not the solution that we were looking for in regard to certainty in planning.

This is an issue that's being addressed trying to satisfy concerns from other agencies in regard to availability of sewage capacity, water commitments etc, and I think there should be another solution to it, possibly forewarning or conditional draft plan approval. That capacity has to be made available before you can proceed with your development.

Everybody seems to be obtaining draft plan approval, and on that basis they've got a commitment to capacity at that point in time. Then going on, nothing happens to the project. Now we have numerous projects at a standstill. For new projects, small infill projects that we are involved with, let's say—are you speaking to the microphone here? Everybody's busy talking around here.

**Mr Eddy:** That's not correct. Not everybody is busy talking, sir.

**Mr Vandermeer:** Okay, thank you. I've taken time out of my busy work schedule to be here to make a presentation of the concerns that I have.

**Mr Anthony Perruzza (Downsview):** Everything you're saying is being recorded by Hansard and we all can review it later as well.

**Mr Vandermeer:** It's distracting my presentation, sir.

**The Chair:** Please go ahead, sir.

**Mr Vandermeer:** On that basis small projects are being held up. There is available capacity in treatment plants normally for further growth and commitments are allocated to types of uses that are not marketable at today's time frame. On that basis no development has been proceeding. Commitment is made available and there's no contingency made to adjust for what could be allowed to proceed.

At the same time, what has been approved—you wouldn't really want to pull away. If a project is for apartments today, nobody in the present climate is going to be building apartments. At the same time, the land use designation for that area should probably still be of a medium- or high-density use. I don't feel that a draft plan should be withdrawn on that basis, to take that away.

The public, the neighbours in the surrounding area should be forewarned of what the type of uses will be: provisions for zoning, withholding designations, also for that to ensure that the public is forewarned and no surprises come out. Everybody feels that vacant fields can be parklands in a sense. The documentation is there and it can be made available so they are forewarned of what is happening in that area.

I feel that draft plans should be looked at with conditions to be allowed to be approved for development of the property. But there's no guarantee that there's capacity. Through development charges etc, funding is being provided to make capacity available to let development proceed. These are some of the planning issues, economic development issues, that have to be worked on with municipalities to have their strategic plan in place to allow it to happen.

I feel it's important that the planning process is there, and the documentation is in place, and reasonable

response times to reply to this to get approvals in place, and not just at the initial planning stages when planning is being done. We can go through the approval process and finally get draft plan approval, but there's still a long hurdle afterwards just to get clearance letters from agencies because of their own resource commitments.

1010

We have projects that were committed, were tentatively looked at to be approved for June or July of this year that have still not been draft plan approved. Just taking through little minor changes to studies, from draft plan to final approval, a review of engineering, minor modifications have to be looked at and so reports, mapping has some minor adjustments and it's not clear to them.

On that basis, I would like to see that draft plans are approved and that there are implementations put in place that if there are too long delays, we've got to move on ahead, because when you have short periods for the development industry to respond to providing the needs of the public for housing, two to three weeks is a long period of time.

When you look at little time frames of bringing projects on stream in the spring for your summer construction industry and closings that happen, let's say, around August, prior to people going to school, your next stage goes on in sort of November or December again, so we have these little activity periods. So a month in a six-month period of time in a year when our industry is very active has a big impact and the responses are not there.

I realize that they're resource allocations as well, but when we're dealing with agencies who want to be involved with the process, then they should also have a better commitment to respond. It goes without saying that it's some of our crown corporations that are creating the delay.

That was one of my concerns that I felt was not the solution with the way it's being presented now to overcome it as the lapsing of draft plan approval, and I think it should be looked at that a solution of a condition of draft plan approval would be available so plans can stay in effect.

My own feeling in regard to what's been proposed as supportive of is the municipal planning authorities. I feel it is good for this area, the way our county structures are, and we do have groups of growth areas that I feel if municipalities are cooperative it would make this venture work. The old planning boards had difficulties, but I feel that the process being set with commitments from municipalities to develop municipal planning authorities could work very well around some of the major municipalities in the Quinte area, and I am supportive of that.

The only other concern basically that I see happening is that there's no appeal period on the variance process, and I just find that the reactions I get many times from getting involved, the decision can be very biased, political and I think there should be referral on that basis.

These are my basic concerns. I sense that we've been getting more involved proactively and we can have green groups being developed, being concerned with issues, we can have chambers of commerce working on, but all of

a sudden we create a group of land owners, businessmen, and you end up being labelled. All of a sudden they're saying we're trying to help the political process be involved, get the public informed, that we have to find a balance between our economy and our environment and our social lifestyle, and the balance is always there. But if it gets weighed to one side, then I think we have to pull it back in line. I feel that our industry had pulled back and was not that proactive in our local communities.

I don't want to become a politician, I've been asked to many times. I don't want to follow up and have to deal with complaints at 11 o'clock at night about potholes or whatever in roads, because I do live in a township as well. I've been involved on committees and I feel I can be involved that way more, but sometimes when we want to influence it, it looks like we're lobbying and that's not the intent. I'd like to feel that a politician should be well informed, and that's why I want to take a brief moment of my time to present my views here on behalf of the industry and the private sector who, I feel, is generating the funds.

It's very difficult when you have a project that I was working on, which was delayed for over six weeks for an approval. It was supposed to come on this spring, had the potential to bring in \$12 to \$15 million over its first phase. It had a very low priority when it was private sector commitments of home buyers coming into a subdivision. Meanwhile we're working off trying to spend \$500,000 here on a infrastructure program and things like this out of our tax dollars.

I was pushing for that, and when we get put on a low priority of getting a clearance of a study that's been done and all we're asking for is compliance to it and we send a letter off, that letter takes three weeks. Three weeks in a two-month time frame is a big, significant number and it has affected people dealing with financial institutions.

That's the gist of my presentation.

**The Chair:** Thank you very much. We'll begin with the official opposition. Monsieur Grandmaître, and after that Mr Curling. Five minutes per caucus.

**Mr Bernard Grandmaître (Ottawa East):** I'll have one question, and then Mr Curling. I agree with you that time is money and delays are very costly, and I suppose from the tone of your presentation it seems that you agree with the principle of Bill 163. If you were the minister or if you had the power of the minister and you wanted to make some changes to Bill 163, what would be your priority? What changes would you bring about or what amendments?

**Mr Vandermeer:** Part of the legislative process I'm not that experienced with is somehow deadlines. We're dealing with deadlines up front at the planning process and responding to draft plan approvals etc. It's very easy when you go through the stages to say you've got so much time to respond to a draft plan submission for development of land or an official plan as established policy, but when you go through the rest of the process—it's very easy to pick apart a study and say, "Let's have some more work done on it." I sort of have the philosophy if I can meet with somebody and respond within an hour, I'm going to get his reply the next day. If I respond

to him a day later, he's off on to something else and it's going to be a week. If I take a week, it's a month. That's the delay problem of the mechanism today.

**Mr Grandmaître:** Do you agree with the time frame of Bill 163?

**Mr Vandermeer:** As part of the initial planning process, I can work with that time frame, yes. It's the follow-up later on and approvals that have delays that are not being addressed.

**Mr Grandmaître:** Very good.

**Mr Alvin Curling (Scarborough North):** Mr Vandermeer, when you were reading off some of your involvement, you said you were quite involved with the home builders' association at a Canadian level and an Ontario level. I'm sure you would then observe from Bill 163 whether or not you would agree with some of the comments we have been hearing, that it is felt it is more or less urban planning being forced upon rural planning. Do you feel this bill is reflected that way and that things have to change in order to recognize that they plan differently in the rural areas than in the urban areas?

**Mr Vandermeer:** I won't differentiate between urban and rural, but I do think—let's put the name to it, the Metropolitan Toronto area. We have urban areas here too, an urban and rural intermix that goes on between townships and cities that we have, but I do feel we're being asked to implement Toronto solutions to our area. My view is that basically there is resentment.

**Mr Curling:** I was about to say that too, and I think you hit it right on, that people are saying too that it's a Toronto plan enforcing upon the other areas of Ontario. So it's worse than even I've described it, from rural to urban or from urban to rural itself.

**Mr Vandermeer:** Yes. I guess that's one of the reasons why I thought the municipal planning authority is what could help become a solution for our area. If I'm comparing the Belleville area, let's say, we have a county structure, Hastings county. The city of Belleville has its own planning structure. Sidney township is adjacent to Belleville. It's sort of semirural-urban. It's being serviced in with the adjacent municipality plus their own. So we're getting that sort of mix that's occurring.

I feel you've got a planning authority for the county which reaches way up north into the Bancroft area and the total interests aren't all the same. We have to give regard to each other, but there should be sort of a sub-committee planning authority down there that can take care of your official planning as well as your draft plan approvals, instead of having to deal with maybe the county level.

**Mr Curling:** I will turn this into something that I hope you can expand on. You have also indicated that delay is really something that costs you in some respect. We've heard that from many developers themselves. As a matter of fact, they approached the government now. It's the developers now. We call them the not-for-profit developers, and then have the other private sector saying that delay and the price of land and infrastructure costs are so great. Do you see that this kind of a delay itself has been driving up the cost of affordable housing and



therefore the creation of another sector of not-for-profit developers is out there now?

**Mr Vandermeer:** Oh, yes. The cost has gone up considerably in delays from the development aspect. The project I'm comparing to right now has been delayed about three months. On the time basis that was being established, there's a million dollars sitting in the ground that we want final plan registration on. We're waiting for one more clearance letter.

1020

**Mr Curling:** From whom?

**Mr Vandermeer:** This one is from the Ministry of Environment now, but there was a crown corporation involved as well. I found them even worse at this point in time.

**Mr Curling:** Which crown corporation was that?

**Mr Vandermeer:** It was the railways.

**Mr Villeneuve:** Thank you, Mr Vandermeer. I think I detect a fair bit of frustration in your presentation and I think that's fair game. That's why you're here. The OMB, you've had an opportunity of dealing with them quite extensively, have you?

**Mr Vandermeer:** Yes.

**Mr Villeneuve:** How have you found them to this point, prior to 163 and to Sewell?

**Mr Vandermeer:** Up until recently we knew where the parameters were dealing with them because you are doing your homework. Our philosophy in developing land was, with our clients, we could put up front what the hurdles are and how they had to be addressed. If you did your homework, presented your studies and supported your evidence, it was weighed reasonably fairly.

The last hearing basically was we found the Ontario Municipal Board was taking the same role as the Minister of Municipal Affairs and was reviewing all the information. If it was one-sided information, they were basically turning down the approval when they weren't hearing the negative side. They're trying to say it's incomplete, which caught us off guard.

But that's the direction it's going in, that they want full documentation to support the recommendation instead of weighing the objector. If the objector has withdrawn, and we had a situation—there was one localized concern, but not a planning concern, and we had to take a deferral on the board and redo additional planning documentation. The hearing has been adjourned and it should come back in later this month, to try to establish with the Ontario Municipal Board the status.

**Mr Villeneuve:** One of the major problems, and you've mentioned the Ministry of Environment, in my travels to and from Toronto, from my riding way down in southeastern Ontario here, I've many times stopped in Kingston to attempt to get comments. All they have to do is to comment, and it's a very frustrating situation when they're telling you that it's going to take six weeks or six months to comment. It's one of the most frustrating things of all.

Minor variances, a major thorn in the side of some of the developers. The mechanism is being done away with

in 163. What's a minor variance? We're looking for guidance here.

**Mr Vandermeer:** There have been various decisions on minor variances, what is a minor variance. You really can't quantify it, we feel. It's sort of looking at, can you encroach into your side yard or into your front yard? You have a 25-foot front yard and the zoning bylaw sets up it's 25 feet and you built your house, and by accident, because you're doing it yourself and you didn't want to pay the surveyor to come and stake it out for you, it was going to cost you \$500, you're ahead two or three inches. The legal department looks at it and says, "The bylaw says 25 feet," and the surveyor goes in and says it's, let's say, 25.2 feet. They say, "You're out by 0.2 feet and you need a variance." Some surveyors will say: "Let's round it off. The degree of accuracy should say 25 feet."

I think there should be some mechanism in there to give you some flexibility. I've always suggested, you know, I don't think it's fair, you say 25 feet in the front yard and 25 feet in the rear yard, and you expand the house one foot, six inches either way, then you're trying to cheat. But if you buy—honestly, what is a side yard requirement? It was set up to give you a sort of quality of separation and now we're trying to quantify it.

**Mr Villeneuve:** Okay, you've described a minor variance. We've also been told in this forum that minor variances have changed the use of the land. Have you seen variances that are minor to that point or major to that point?

**Mr Vandermeer:** I have seen specific uses put in, yes, on a variance basis.

**Mr Villeneuve:** Do you agree with that?

**Mr Vandermeer:** No, not from a land use perspective, because that's a major change. Now, there are short-term bylaws that can be implemented that you can have a use established for, let's say a one- or two-year period, which I would rather see done. But for long-term use it should be put in a zoning bylaw.

**Mr Villeneuve:** Thank you.

**Interjection:** Zoning bylaw, did you say?

**Mr Vandermeer:** Land use zoning, yes.

**The Chair:** There are three speakers on the list, just a reminder: Mr Wiseman, Mr Johnson and Ms Haeck, if there's time.

**Mr Jim Wiseman (Durham West):** I'd like to go over a couple of your comments and to get some comments from staff, if the Chair would allow. You said that plans of subdivision will lapse. My understanding of section 50 of the Planning Act now is that the town or the local planning authority could repeal a subdivision approval.

The other comment that I'd like to have some comment is on page 36 of bill, under section 50 of the act that is amended, on expiration, where it states that "The council of a local municipality may, at any time before the expiration of a bylaw under subsection (7), amend the bylaw to extend the time period." Does that section allow for the local municipality to extend a plan of subdivision under this bylaw, or is there an automatic suspension of subdivision planning?

**Ms Diana Dewar:** I can respond to that. I'm Diana Dewar from the Ministry of Municipal Affairs. The bill provides that a municipality may provide that a draft plan of subdivision will lapse. The minimum period would be two years, but it could certainly longer be than that. This is enabling legislation. The bill also allows that the municipality can provide for an extension of that draft approval. So there certainly is a lot of scope there for the municipality and the developer to negotiate.

The other section that you referred to—

**Mr Wiseman:** Section 50 of the current act.

**Ms Dewar:** I'll just have to look that up and I'll get back to you.

**Mr Vandermeer:** Could I just comment? The word you used there was the word "negotiate," and that's what we're always coming back to the table on, which brings back the uncertainty: Where do you stand in the future every time? I feel that the issue at hand here, if you have sewage capacity available in your treatment plant and it has been committed to somebody's draft plan and somebody else comes in and says, "Why should he have it? I'm going to go tomorrow. I want my draft plan approval," how do you weigh the fairness at that point in time? It's going to be very hard.

He may just say, "Register my final plan," and he could sit on it. You could take the final plan and just change it and have it registered. Then you go into the deeming process of undoing a plan. I've seen subdivisions registered and still sitting there with sewage capacity committed to it and nothing has ever been done.

**Mr Wiseman:** Under that circumstance then it would either benefit or not benefit, depending on which camp you were in.

The other question I had is, my understanding is if an official plan is drafted and the zonings and densities are put into place, that even if the draft plan of subdivision lapses, those zonings will not change, so communities will in fact have some security of knowing the official plan has designated it, although my own opinion is that official plans aren't worth the paper they're written on because councils change them like that. Where I come from the official plan isn't even six months old and there are already five major official plan amendments. Somewhere there's balance and the other perspective on the official plans is they don't really mean anything anyway.

**Mr Vandermeer:** I look at an official plan as a policy for direction and too many people are using it for enforcement. We're starting at point A and we're heading 20 years down the road to another area. But I think we can wave around on that line and we're trying to interpret literally the issues at hand in interpreting an official plan.

The zoning bylaw will maybe designate your land use, but any time you go through a draft plan of subdivision process, many times to control it, if you had your land zoned, you should be able to develop on it. So normally you'd have a holding zone on that piece of property, which still opens you up into the public process again for an objection, and if you get referred to an objection, you're again waiting for a year down the road possibly before you could have a hearing to get it resolved.

If you can put the public at ease about what is going to happen in their backyards and the commitment is fully from the land owner/development sector to move on ahead—it's his money, out of his pockets, depending how deep they are—at least he's in control. But if he's going to objected to because they don't like the land use that was there and they'll try to find some technicality to defer it to the board, you're into another 12-month, 18-month delay, and that's where no commitments can be made.

**Mr Wiseman:** I have to defer.

**The Chair:** Mr Johnson, it will have to be very quick because there's hardly any time left.

**Mr Paul Johnson:** I don't get to go into the detail I'd like to, but you lead into the point I wanted to make, and that was about public participation. One of the things that can cause a lot of grief for provincial members, municipal politicians and indeed developers is the fact that there is a perception that developers are doing something underhanded from time to time.

If there was continual public participation in planning, in ensuring that communities are developed in the way that the community, in a broad sense, wants that to happen, then that would probably reduce or eliminate some of the possible interventions that cause you all the grief with delays. Would you agree with more comprehensive public participation in planning?

1030

**Mr Vandermeer:** The public doesn't show up until it happens in their backyard.

**Mr Paul Johnson:** You see, if they were there in the beginning, that may—

**Mr Vandermeer:** But that's where your big picture comes into play. You're trying to plan your community and so you say, "This is how it will be growing." But the minute that growth occurs in their backyard and you have to go for zoning on it, then all of a sudden they became aware of it because they're not involved with the process and they're not interested in it.

**Mr Paul Johnson:** But isn't it true, though, that—

**The Chair:** Mr Johnson, I'm sorry.

**Mr Vandermeer:** I do feel that the public is involved with the process throughout, at least I find in this area and I don't think there's anything underhanded, but many presentations now—you do an official plan amendment and a rezoning and draft plan concurrently, so that people know what's going to happen. It used to be you did an official plan amendment. I went for high-density use on a block of land or a residential use of some form and further down the road, the plan came in and you found out what the use was. But now I think all the information is brought up front more to the property owners.

**The Chair:** Ms Dewar, you had an answer to a question?

**Ms Dewar:** Yes. Subsection 50(7.1) allows for the expiration of a part lot control bylaw and that really wouldn't have any effect on a draft plan approval. There would be no scope there to provide for the lapsing of a draft approval.



**Mr Wiseman:** I guess my question then is, do local councils have at this current time the right to repeal a draft plan of subdivision?

**Ms Dewar:** A draft plan of subdivision can be withdrawn under the existing act, yes.

**Mr Wiseman:** By the local council?

**Ms Dewar:** By the approval authority.

**The Chair:** Thank you. We need to move on.

**Mr Eddy:** No, by the approving authority, whoever they are.

**Ms Dewar:** By the approval authority. That's right.

**Mr Eddy:** They've got the authority, yes, but if it's the province, then it's on recommendation of the local council.

**Mr Wiseman:** No, you don't have to require ministry approval to do it under the current legislation.

**The Chair:** All right, Mr Wiseman. We can get these clarifications in a different way.

Mr Vandermeer, we thank you very much for sharing your ideas and your concerns with this committee.

**Mr Vandermeer:** Thank you.

#### QUINTE LABOUR COUNCIL

**The Chair:** We invite Quinte Labour Council, Belleville, Mr Douglas Sword, president.

**Mr Douglas Sword:** Good morning, Chairman Marchese and members of the committee. I would like to say at the outset that the Quinte Labour Council appreciates the opportunities that have been presented to the citizens of this province over the past four years to attend hearings like this and put forward their views.

The Quinte Labour Council welcomes the opportunity to appear before this standing committee on the administration of justice and to present our concerns based on our Belleville experience regarding municipal conflict of interest, be it real or perceived. That's what I would like to address specifically this morning, the aspect of the act that will deal with the conflict of interest.

Speaking as president of the Quinte Labour Council, representing in excess of 8,000 public and private sector members from over 40 local unions in three eastern Ontario counties, which incidentally include the cities of Belleville and Trenton and the town of Picton, let me state quite candidly that we are of the opinion that while most elected people are principled in the conduct of public business, they are nevertheless, most unfortunately, tainted by the practices of those who operate in the shadows and are sensed, from time to time, not to be working in the best interests of the total community.

Because of the adventures of some elected officials at the federal, provincial and municipal levels of government, most unfortunately the fingers of cynicism, suspicion and mistrust are pointed at all of you. When a local or national newspaper seeks to discredit any one of you, you are all held in disrepute. How many times have you heard, "They're all the same"? That's most unfortunate because, living in a democracy like we do, it's unfortunate those things occur and those allegations are made.

Necessary to local governments, in our opinion, are

requirements that secure public accountability, enhance effective leadership and administration and promote representative and informed citizen participation. While endorsing the proposal that the minister be empowered to appoint a commissioner as set out in schedule B, sections 7 and 8 of Bill 163, as recognition by all municipal councils that full disclosure, with appropriate exclusions, must be appropriate with conducting public business, we strongly recommend that all citizens have greatly improved access to information through the creation of public information centres, and by that I don't mean in the neighbourhood of Queen's Park and Toronto. This centre should be administered by the city clerk who should ensure that all public libraries are aware of the documents available at this centre and, where practical, more formal documents are available.

In 1991 a politician fell from grace in British Columbia and, to paraphrase this official, it perhaps isn't a conflict of interest if nobody else knows about it. We're convinced that secrecy is the camouflage used by politicians to curtain their involvement in certain issues invariably leading to some type of tangible reward for self, a family member or an associate. While within the law, the cloak used to mask these activities is, for the most part, numbered companies and companies using coded names whereby the names of the major shareholders will probably never be made public.

As we have already stated, the Quinte Labour Council considers it important that the public is fully informed and the information is readily available. With regard to any person holding elected office, that person must be obligated to make public any and all holdings owned in whole or in part by himself or herself or family member. It is only appropriate that some control is exercised over senior administrative staff who may, by themselves or working with others, be in a position to capitalize on insider information. All of the foregoing information would then form part of the documentation available for perusal at the public information centre. Blind trust is no longer the answer.

Please allow me to cite a recent example of the disdain in which even the possibility that a conflict exists is held. It's unfortunate I couldn't show you this tape of the August 15, I believe it was, meeting of the Belleville municipal council. In it you would be shocked at the indications that this sort of thing goes on in an elected council.

To let you know a couple of things that happened, during the August 15, 1994, meeting of the Belleville city council it was asked by Councillor Meeks if the chairman of the council-appointed committee, Belleville 2000, declared a conflict of interest as a majority owner of a property abutting a heritage property for which funding has been applied for under the federal-provincial infrastructure program.

Another councillor, Councillor Bochnek, stated there have been other violations that have been far more serious. Councillor Tausenfreund, in what might be judged as a cavalier attitude towards the act, stated he was a shareholder in Century Place, the abutting property, and he would, in spite of this, be voting on the question.

How do we deal with such conspiracies of silence and, again, such arrogance? I would leave it to you people who draft and pass the laws in this province to look into such things and empower the citizens of a community to react in a way that won't lead to extensive legal fees.

As it now stands, and not to allege things among—oh, another thing. The taxpayers were reminded there is a procedure under the act, and this was stated by the mayor of the city, as it now stands, not to allege things among each other; in fact telling them not to do this in public. “Don't wash your dirty linen in public.” We are sure that a commission is the only answer to the old boys' clubs which appear to flourish in some municipalities.

We also have concern that some members of municipal councils languish far too long as elected members and gain re-election under the recognition factor. Those who read the *Toronto Star*, and I think a lot of us probably do, would have read some time ago that a woman was running for her first election in the city of Toronto and she said that is one of the factors that makes it most difficult for new people seeking public office to get elected, that people look down the list—maybe not at the provincial level; I'm not quite sure how you people make out—but in the municipal people look down the lists, and if they have any knowledge of that person at all, be it a store owner who advertises on the radio or through other means, being a ball player, hockey player, whatever, that's a familiar thing to see and they generally get a vote. We strongly feel there should be a termination period and we recommend two three-year terms.

We have on the municipal council of the city of Belleville, as an example, people who have been there 17 years, 20 years and they will probably get re-elected through the factor that that is a name that has become known, one through the fact that she is involved with a fund-raising committee through the Belleville sports community and that person seldom speaks, practically never speaks at a council meeting. Surely people like that must have opinions.

1040

Over a period of time it has been found that a watchdog press provides an invaluable service in any given community. However, in its absence, we depend to a large degree on the integrity of all elected members and, where integrity is questionable, we must be able to readily identify breaches of public trust when they occur. To this end an amended act must be explicit and carry adequate penalties.

I'll refer back to the statements that were made at the city council meeting in Belleville on August 15, and a watchful press would have noticed those allegations of conflict of interest that flew around the council table and done some investigation, would have looked into it and come up with something probably in print. However, one of the articles that came out in print of the council meeting was how many times members of city council referred to the mayor as “your worship.” Total balderdash, I believe.

The Belleville *Intelligencer*, however, in its editorial of August 31, did state that “Bill 163 is a good piece of legislation—provided it works as well in practice as it

reads on paper.” It further states that: “Councillors will also be restricted from accepting presents or benefits. In the past, there have been rumblings that some politicians may have made lucrative land deals while on Belleville council.” Again, an alert investigative press would have done more delving into what may or may not have happened.

Also in a letter to the editor in the *Toronto Star*, dated August 31, 1994, the writer James Cass of Stirling—just north of Belleville incidentally—stated, “Secrecy has long been the cloak to keep us uninformed about projects and deals that affect our quality of life—and our bank accounts.” He concludes by saying that, “We must fight for knowledge and insist on playing an informed role in our own community affairs.” The Quinte Labour Council asks this standing committee to support our recommendations for more open municipal government.

We do have some recommendations. We haven't, as I say, gone into the land use planning part of the new act, but we are restricting ourselves to the one question:

(1) That local registers be established and maintained in each public information centre of all disguised companies, whether by number or name, and identifying all officers and principals.

I don't think that would be difficult for those people who hide behind the fact that they're part of a numbered company or a company that may bear the name of Wellington Inc or Jenrob or whatever other name.

(2) That all assets be declared and filed with the city clerk and the public information office within 30 days of assuming office and in the event assets are in communities which the municipality negotiates, for example, sewer and water, that these assets must be filed with both municipalities.

(3) That a means of appointment to boards and commission be part of amended legislation and that it be consistent from one community to all communities.

(4) That a person be appointed and, most importantly, given authority to investigate any conflict of interest when petitioned to do so.

We have a small part of a quote from Bertolt Brecht, which states, “And where you have recognized an abuse itself, please provide a remedy.”

All of which is respectfully submitted on behalf of the Quinte Labour Council. Thank you, ladies and gentlemen.

**Mr Villeneuve:** Thank you, Mr Sword, for putting forth, and I guess your entire recommendation revolved around providing information. You're suggesting that a commissioner be more or less in charge of all municipal officials. Is that your recommendation?

**Mr Sword:** I don't think I meant that and it's possible that you misunderstood what I did mean by that. I would think, due to cost itself, that a commissioner would have a larger area to cover than, we'll say, the city of Belleville. He would only respond to petitions by people from a given municipality with regard to conflict of interest.

As an example, as Councillor Bochnek said and I referred to in my submission to you, she alleged that more serious violations of the conflict-of-interest act have



been conducted over the past several years in Belleville. I think you heard me say that. That being the case, then it should be quite simple to get a list of petitioners in the amount required to ask a commissioner to come in and interview that councillor and see just what has gone on.

Then there exists the extreme possibility that that person who I would say has had a breach of trust with the people in the community not be supported in the next municipal election. That way it would be giving the opportunity to people or the electorate to know who they're voting for and, the other one, for people to display arrogance and to almost dare people to lay a charge under the current act. I certainly don't want to go through that. However, in the event we had a commissioner, I would have no fear. As I say, lawyers don't come too cheaply. I don't know how many of you are, probably one or two.

**Mr Villeneuve:** The city of Kingston had a rather sad experience with conflict, and, you know, pretty well everyone can be perceived to be in conflict on just about every decision, from Sunday shopping to the opening of stores if you're a business person.

The township of Vaughan made a presentation to us yesterday in Peterborough and they're having the problem of everybody being so gun-shy that they are declaring conflict if it's even remotely—and it evades them having to take a decision. You can get involved too far the other way on that kind of deal.

**Mr Sword:** Yes. I think, with all respect to what you're saying, Mr Villeneuve, that this afternoon you will be having more explicit examples of conflicts of interest that have gone on in the city of Belleville when a friend of mine appears here this afternoon.

There are, and I agree with you, people can become nervous with regard to conflict of interest, especially those people who deal in the purchase and sale of properties. I have sympathy with regard to that. However, you people, I'm quite sure, can come up with something leading to their protection. They themselves have a very powerful lobby group.

**Mr Villeneuve:** One final question: Would you allow everyone and anyone to go to the commissioner and find out the interests of a particular councillor or would you want it to go through the freedom of information system whereby it wouldn't be simply frivolous questioning?

**Mr Sword:** Just one other thought occurred to me with regard to your previous question. I think the commissioner, whomsoever would be appointed by the government and someone outside the tentacles of government, if I can put it that way, somebody not attached to a political party, would be that well versed and intelligent not to entertain a challenge for any specious question at all. Yes, we would have to have some intelligence, especially in a commissioner. Your other question, I'm sorry, that was, if you wouldn't mind?

**Mr Villeneuve:** Going through freedom of information to obtain the information, or would you make it widely available to everyone and anyone at any time?

**Mr Perruzza:** He just answered it, Noble. He said you have to use good judgement.

**Mr Sword:** Yes, that may be part of it. But also, what harm is there if we have an Ontario limited-numbered company? What harm is there in having that information available at the local level for me? Are the people that nervous? They also give the indication, when they become that nervous to disguise the name of their company or whatever with a number or, with apologies to the committee, a bastardized name to the public that they are covering something up. They don't want it known that Mr So-and-so down the street is a co-owner in a strip club. This is an extreme example but, however, something that would embarrass. I think the intelligence of people would override the specious things that are put forward.

1050

**The Chair:** Mr Sword, let us continue with some questions. There are three people on the list. Ms Haeck is first and then Mr Johnson.

**Ms Christel Haeck (St Catharines-Brock):** Thank you, Mr Sword, for your comments, and in fact you reflect some of those that have been made in my own community. Just as somebody who worked as a public librarian for 16 years, on page 2 of your presentation you make some comments about materials that should be available to the public within the library realm. Actually I think in some instances small public libraries haven't had the resources to buy some of the materials that in fact would answer very much the concerns that you already have. The material is there. It's just basically knowing the name of the publication for which to ask. That's really more, I think, in answer to your question at the top of the page.

But towards the bottom of the page, you make an interesting recommendation, and one that I feel should be seriously considered, and that relates to the senior administrative staff within a municipality also in some respect being required to fill out, if not the full conflict-of-interest form but at least indicate where they may have some concerns, some of their own financial interests and, when in fact they make recommendations, how that may affect the larger picture. I welcome that recommendation, in light of some concerns that have been happening in my own community. I will defer to my colleagues.

**Mr Paul Johnson:** Thanks for your presentation before the committee today, Mr Sword. I just want to say that it is on the public record now. Mr Ian MacInnis, a councillor from Kingston, was before this committee in Peterborough yesterday and what he had to say to this committee, if any municipal politician in the province of Ontario was paying attention, they've got to be shaking in their boots, because it would appear that almost regularly they're in conflict of interest.

I would say, as a result of that then, that they would welcome this legislation and they might even welcome stronger legislation in so far as, I think, if they had access to a commissioner for free advice as to whether they were in fact in, or not in, conflict of interest, given that the commissioner had information on the individual, it would be very beneficial.

One of the biggest complaints we hear—and my question is coming—is that, given the legislation as it is

and how it will affect municipal politicians, there's a hue and cry from some that we won't get good candidates. Well, I just want to ask you, Mr Sword, do you think, given the population from which we draw our candidates, that this will indeed exclude good candidates?

**Mr Sword:** No. I certainly don't think so. If I were a land owner in the city of Belleville and I felt that people would be after me on a conflict of interest, I wouldn't stand for council.

But the other thing, when you talk about getting well-qualified people, the mayor made a notice of motion two city councils ago. They should be bringing forward a motion to once again go back to the ward system in the city of Belleville. That was the argument that was put forward by an article in the local newspaper, much the same as you're saying, that if we split the city of Belleville into wards, some of the wards wouldn't have qualified people.

I take that as a direct insult personally and on behalf of every citizen in the city of Belleville. Of course we've got qualified people and of course it's not right to have the majority of the representations on the city of Belleville council coming from one section of the city, which is the east end, which is the affluent part of the city of Belleville. I come from the west side of town and there has always been an east side-west side rivalry, going back to my childhood. No, it's an insult to imply that. If that were true, then we would take the province of Ontario and say that we couldn't get a qualified person from Mr Villeneuve's riding or Mr Grandmaître's riding. We would have to throw it open to the whole province and maybe get them all from Toronto. No, it's an insult to people. Thank you.

**Mr Villeneuve:** Heaven forbid.

**Mr Sword:** Or Kingston and The Islands, as an example.

**Mr Curling:** Thank you, Mr Sword, for your presentation. I think it is commonly said that democracy is not the best—

**Mr Villeneuve:** It's not perfect.

**Mr Curling:** It's not a perfect process, but is the best one that we have so far.

**Mr Sword:** We've never tried any others, though, Mr Curling. We don't know that—

*Interjection.*

**Mr Curling:** Well, the fact is that I feel it has worked pretty effectively so far, until we are bold enough to try other processes than the democratic process itself. Even I, who have been in politics just about 10 years, find myself just getting the strides of things in order to represent the people properly, to understand the very complex process that is there. Limiting people to run for a time, I think, would be somehow restricting them to performing at the level that could be more effective.

In other words, I am just saying I would disagree if they would say people can only run two or three times, especially in your very democratic process of the union itself. I'm sure people would like to participate, but as soon as they get their strides and understand what's going on, they run for president, like yourself, and they run for

other positions. People would really like to go forward, but they're not able to do so unless they get a sense of what's happening.

I just want to ask you a question. You said, "...municipal conflicts that full disclosure...." I just wanted to know what you define as full disclosure, and I'm going to repeat something we heard yesterday. Someone said, "If I have any assets or whatever outside of the jurisdiction of my duties within my community, should I be declaring that, if it has really no bearing on what I do here?" Should that person disclose that kind of asset within that community?

**Mr Sword:** Do you mean within the geographic community?

**Mr Curling:** Yes, outside of your riding or constituency, or whatever.

**Mr Sword:** Where necessary, yes. I will give you an example. The city of Belleville is now making it possible for some of these smaller municipalities just outside of the edges of our town—as in one example, across the bay, piping water over from our filtration plant. Now, if I were a politician in the city of Belleville and I were to capitalize on the water going to Rossmore, to put water into property that I own over there so that I could build, of course there would be a conflict, because he would then be enabling that community to have water, which would benefit him as a land owner. So there are examples that can be used.

**Mr Curling:** So there are pecuniary interests there. One other question: You also stated that one should declare whether "himself or herself or family member." What is your definition of a family member, and where does that stop? Does it stop at wife, husband or children, or does it go with uncles or cousins? I know that may have a brother's wife who has an interest, has no control why you ran in politics. Then all of a sudden, they themselves would have to be declaring all of their assets because you decided to run in politics. Where do you stop that family-tree span in declaring conflict of interest?

1100

**Mr Sword:** I would see no great problem with that.

**Mr Curling:** How far, I say? Brothers and sisters?

**Mr Sword:** I think a person's conscience should be somewhat of a guide for them. We're all adult, intelligent people, and if I'm going to see that a nephew of mine capitalizes on something I can do, then why should I do it?

**Mr Curling:** I'm not asking that. I'm asking a question here, if you decide to run, does your nephew declare his assets?

**Mr Perruzza:** The answer is you should stop with good judgement.

**Mr Curling:** I didn't ask you. I'm asking the gentleman here.

**Mr Sword:** Not just by the fact that I decide to run, no. Not by the fact that I decide to run or not by the fact that I might get elected, but by the fact that something may come to the council table that will affect him through me.



**The Chair:** Mr Sword, we've run out of time. We thank you very much for participating in these hearings.

**Mr Sword:** I appreciate the opportunity of appearing, and as always, I find the members of the Legislature most congenial and open for suggestions. Thanks very much.

ROBERT BLACKADDER

**The Chair:** The Greater Kingston Home Builders' Association cancelled, so we'll go on with the next deputation, Mr Robert Blackadder. Welcome to this committee. We welcome you here.

**Mr Robert Blackadder:** Thank you very much. I would like to say I appreciate the opportunity to make my views heard on Bill 163. I'm appearing as a private citizen. I would also like to apologize for the rough appearance of my written brief.

Although the purpose of Bill 163 is superficially to revise the planning and development procedures in Ontario, its main purpose is to revise and enhance those parts of the Planning Act which pertain to the natural environment, and to this end Bill 163 contains many desirable elements.

However, the concentration of attention on the environmental aspect of planning and development implies that the economic and social effects of this bill are of no consequence. An immediate effect of this bill would be the cost, to taxpayers of course, of the multiplicity of effort in having so many planning authorities. This would inevitably lead to immediate and large municipal tax increases to establish and maintain an increased and growing bureaucracy. My presentation explains my views.

While Bill 163 pays lipservice to various aspects of Ontario life and land use planning, it is obviously an environmental protection bill and appears to regard all of Ontario as being composed of the greater Toronto area, period. There are already something like 150 pieces of legislation currently in effect in Ontario protecting the environment either directly or indirectly. This bill, biased as it is towards the large urban centres, certainly does not do justice either to the environmental, human—population and ethnic—economic or geographical diversity of Ontario.

The obsession of this bill with promoting urban growth and discouraging rural development is shocking. To me, rural development means improved economic conditions for the smaller centres, towns and villages of Ontario. This is unquestionably feasible without destroying or even harming the natural environment. Urban population intensification will mean that the large cities will get larger, quickly. Since the largest cities in Ontario are mainly located in the prime agricultural area of the province, increasing pressure will be put on this agricultural land for recreational purposes.

Population intensification brings with it intensified problems too: traffic, policing, firefighting and crime to name a few.

The people of Ontario are intelligent and loyal to their province. Incentives and assistance to land owners to improve and protect their land environmentally would do more to protect and enhance the environment and sustainable economic return than more laws.

This bill is, in effect, punitive not only because of the penalties involved with non-compliance, but penalties that can befall a land owner through no fault of his or her own. For example, in 1980 a couple in their late 40s buy a small acreage 16 kilometres from a smaller city and near a village. They set out to improve it, all at their own expense and labour, by reforesting part of it, improving the area of about 1.5 hectares in front of their house—it was all rough unimproved pasture—and also started planting trees for a small choose-and-cut Christmas tree farm. This acreage is an investment for them. They expect it to appreciate and that its sale will help them in their later years.

Along comes Bill 163 with roadblocks to rural development, promotion of urban intensification, and its almost unlimited scope in the definitions of "woodland," "wetland," "wildlife habitat" and "significant." The owners of this property could suddenly be facing severe limitations on the use to which this land could be put. Who will buy undeveloped rural land? Only those who are prepared to spend large sums of money, if necessary, to secure the approvals necessary to comply with Bill 163, and the selling price of the land will have to be lower because of it.

My wife and I are in this situation and, with small variations to the story, so are thousands of other Ontarians, and urban real estate prices will be inflated even more than they are now.

Well over half the population of Ontario lives in the area bounded by the western half of Lake Ontario, the southern tip of Lake Huron, Lake Erie and the US border. In other words, over half of Ontario's population lives in the land area of less than one tenth of that available south of the Trans-Canada Highway east of Sudbury. I am amazed that this government does not see the advantage of encouraging population drift away from the large cities and towards the smaller centres.

Being of the school of thought that says, "Don't bring me problems, bring me solutions," I would like to offer some suggestions.

Considerably more thought should be given to Bill 163. I believe that it would have a severely negative effect on the home building industry for one thing.

Rural, small-town and village residents have aspirations too. They want their properties to appreciate and they want to have job opportunities closer to home for themselves and their children. This would be of economic benefit to the whole province.

The planning authorities should be established at the county level or higher, not at the lower-tier level. Duplication of effort at the lower-tier level would make it very expensive indeed and the county is financially and administratively better equipped to handle this function.

Educate and assist, not only for the protection of the environment but for simultaneous sustainable economic development and to show Ontarians and the world that the two are compatible to the advantage of all. A system of assessment could be set up and grades issued to enterprises measuring the degree of success each has had in integrating environmental and economic considerations.

Good grades would be bragging points and might be of interest to concerned customers.

Clarify the definitions of "woodland," "wetland," "wildlife habitat" and "significant." One of these terms in their present definitions could easily apply to many if not most residential front lawns or backyards.

Any financial loss or loss or limitation of use of all or part of a real estate property must be compensated for by the province if the loss or limitation is due to some feature of the property being designated as significant under Bill 163.

I would like to suggest infrastructure enhancement assistance by the province to the smaller centres north of the presently heavily populated centres, but beyond commuting distance to the large centre. This would encourage population drift towards the less populated areas.

Bill 163 does not move the decision-making process to the municipal level or closer to the people as it claims. The decisions are already made by Bill 163. What the municipality is left with is the yes or no and all the costs involved. If this is not so, then why is it imperative that the wording of subsection 3(5) of the act is changed to read "shall be consistent with" instead of "shall have regard to" as it reads now?

Finally, to anyone who does not feel that we already have enough government, I would suggesting reading page 2 of the Ontario government publication booklet, Put Yourself in the Picture. Attachment A is a copy of page 2. Do we need more? Or is this the Jobs Ontario program at work?

Thank you very much for hearing me. That's all I have.

**The Chair:** Thank you. We have a few moments for questions, approximately one minute or so per member. Mr Perruzza.

1110

**Mr Perruzza:** Thank you very much. I followed your presentation and it would seem to me that by following this that the question that is answered implicitly in your presentation is that planning the way it's happening in Ontario is good now, and the second implication and answer here is, we have 150 pieces of legislation currently in effect to protect the environment and that they are in fact effective and are in fact protecting the environment.

Therefore we don't need any more, because what you're saying is that some people are caught up in situations and there's a perception being created that that situation may be aggravated by Bill 163, or people may be limited, and I look at Bill 163 as a window of opportunity that is opening to all Ontario residents, as the gentleman was saying earlier.

You know for us it's better when the rules are made clearer up front in order to move along, and I suspect that some people when some of these policy statements come down, and I don't expect they'll be down tomorrow and I don't expect the official plans to be firmed up next year, and so on, that some people in that process will be hampered and they may not be able to do things with

their properties that they perhaps were planning to do, you know, 10, 15, 20 years down the road.

Really it's not so much a question. It's just a comment that I want to make. I don't believe that all of the environmental laws that we have are in fact protecting our environment. The disasters are far too many, far too obvious, and quite frankly, far too consistent, and is planning happening well in Ontario now in the way it's being done now? Just drive around and I think you can answer that question quite readily as well. Thank you.

**The Chair:** Did you want to respond to anything that the member raised?

**Mr Blackadder:** I understand that obviously there have to be planning controls and procedures and I don't claim to be conversant with the ins and outs of them at all. One of my concerns here is that because of ambiguity in some of the respects of the bill, we have, for example, improved our land, tried to improve it. We've done a lot of planting of trees on it and so on. Now this land could in effect be almost taken away from us if it's declared to be significant woodland or wetland, or wildlife habitat or something like that. You can't do anything with any of that land.

*Interjection.*

**The Chair:** I'm sorry. There's no time for further dialogue on that. Mr Wiseman, there's no time for that kind of exchange. I'm sorry. Monsieur Grandmaître.

**Mr Grandmaître:** As a follow-up on the definitions of "woodland," "wetland," "wildlife habitat" and "significant," if I can use you as an example, you say that you and your wife are going through some difficult times, possibly because of Bill 163 if it's implemented the way we read it today. Do you think there should be compensation to people like you that do lose the use or maybe have the possibility of losing a sale of your land, because it's been designated woodland or wetland or wildlife habitat without your knowledge—because the government will do this without consulting you. Do you realize this? Do you realize that tomorrow morning you can wake up and receive a letter—I'm giving you a possibility—you could receive a letter that says, "Did you know that 50 acres or 50 hectares of your land is now wetland?" You've never known this?

**Mr Blackadder:** No, when I bought that land, I certainly did not know that this could be done without my knowledge.

**Mr Grandmaître:** And now it's been designated wetland and you can't do a thing. You can't sell it.

**Mr Blackadder:** And I don't believe I'm alone in that, sir.

**Mr Grandmaître:** Oh, absolutely, I know. Do you think you should be compensated?

**Mr Blackadder:** I read several newspapers and so on, and there are too many people who are suddenly being hit. Now whether it's a law that has been recently passed or a law that was passed away in the past, it shouldn't be happening. There's no question about that.

**Mr Grandmaître:** Do you think you should be compensated, because you've been paying taxes for the last 75 years on it?



**Mr Blackadder:** I purchased that land, not because it was a toy, it was an investment, but in the meantime I felt that I could use it for recreation, for a hobby, a hobby farm, if you want to put it that way, and we were improving the land to make it more pleasant for ourselves, for the neighbourhood and so on. If the time comes when I want to sell that land and I find that because it has been designated, unknown to me, that nobody wants it because, "Hey, what can we do with it?" why should I take it on the chin?

**Mr Gary Carr (Oakville South):** Thank you very much for your presentation. You've given us some good indication of some of the things you'd like changed. I take it, if the bill remains the way it is and, as you know, there's an opportunity to change it, but if the bill remains as is now and you were a member of the Ontario Legislature, how would you vote on the bill?

**Mr Blackadder:** Well, the bill covers a lot of ground and for me to vote no, I mean, I might be putting down a lot of good things in the bill. To vote yes, I would certainly be agreeing to the things that I disagree with here. Some of these points that I mentioned there, I think, are not big items to improve on. For example, the wildlife habitat designation or definition here covers every living thing but fish.

**Mr Wiseman:** There's the fish act for that.

**Mr Blackadder:** Okay, but it covers every living thing but fish. That includes bacteria and bugs and things.

**The Chair:** Mr Carr, do you want to follow up quickly?

**Mr Carr:** Yes, I was just going to say, one of the problems we've got is we don't get to say maybe when we vote. It's yes or no, and it is difficult on all these issues, but I was just trying to get some guidance.

**Mr Blackadder:** I'm drawing attention here to some of the things that—I feel like it's such a broad definition that, like I say in my presentation, it could be used to cover the average front lawn. Wetlands are anything that has water either on the surface or close to the surface and so on. At what time of the year? In the springtime, practically everything in Ontario is covered with water.

**Mr Carr:** So what you want is just a clear definition?

**Mr Blackadder:** I think that the definitions could be used for the wrong purposes with the broadness of those definitions, for example.

**The Chair:** Is there a clarification to be made? Mr Hayes.

**Mr Pat Hayes (Essex-Kent):** In regard to designating significant areas like wetlands, for example, I don't want anybody to try to lead the people to believe here that this is what is happening in this particular bill. Those are some of the things, maybe disregarding the property owner with consultation or sitting down and meeting with him are things that may have happened in the past.

But to say that the Ministry of Natural Resources is just going to come in and designate your property as being a significant piece of property that should be preserved, is not the case. The Ministry of Natural Resources will be mapping areas and then that information naturally would go to your municipality. The only

way it would be designated is if your municipality put it into their official plan. That's the way it works.

**Mr Blackadder:** But would they not have to approach the land owner?

**Mr Hayes:** After public meetings and consultation with the land owners and with other people, other interested bodies in the community. That's the way that it does work.

**Mr Villeneuve:** But the fact that the man reforested his land has changed the designation of it. Had he left it as farm land, it would be such.

**Mr Hayes:** No, no. It's just not the case.

**The Chair:** Mr Blackadder, we've run out of time. We thank you for your sincerity and we thank you very much for sharing your views with this committee.

**Mr Blackadder:** Thank you very much for hearing me.

**Mr Paul Johnson:** Mr Chairman, on a point of order: I'm not certain that it's a point of order and you may rule me out of order, but I'd just like to remind the members of the committee and the public who are here today that the reason we're holding these hearings is because the bill as it is right now, in its exact wording, may be amended somewhat. To ask any presenter before us, "Would you vote on the bill yes or no today?" obviously that's why we're undertaking these proceedings in the province of Ontario.

**Mr Eddy:** Mr Chair, that is not entirely correct, because the policies are not subject to review, and it's the policies that are the strongest part of the bill, in my opinion, being imposed and being the law. The policies are God Almighty, so to speak, and they are not subject to review. It doesn't matter what you say about them, they are not under review. So I think I agree with you somewhat, but we have to be clear.

**The Chair:** Mr Eddy, I'm sorry, this is not the forum for that kind of debate.

*Interjections.*

**The Chair:** We're going to move on. We'll check to see if Mr Eric Batten is here. All right, we will recess until 11:45 to give Mr Batten an opportunity to get here.

*The committee recessed from 1123 to 1144.*

ERIC BATTEN

**The Chair:** I'd like to call the meeting to order. Welcome, Mr Batten. Just as a reminder, you have 15 minutes for your presentation.

**Mr Eric Batten:** I think I'll even be shorter than that.

**The Chair:** That would be good, because then members can ask you a question or two if there's time.

**Mr Batten:** Mr Chairman and committee members, I'm a councillor or a deputy reeve in Dummer township in Peterborough county. I happened to be down here today on another mission, so I took this opportunity to meet with you.

Under the conflict-of-interest part of the bill, I'm a little concerned with the disclosure of your assets, your liabilities and what not. I agree with the bill in principle; I think there should be disclosure, I agree with that. But

my concern is that someone could go into a local clerk of a municipality and frivolously just ask for this type of information.

I think there should be a purpose for that person asking for the information. I understand that there is probably going to be a commissioner. Maybe they should have to go through that commissioner to get that information, because if that opens the door, we're going to have a lot of people not be too willing to run for local councils.

Again, I fully agree with that. Yes, you have to disclose the conflict of interest—it's time; it's needed—but the part of my submission that I look at very seriously is that there should be some conditions put on the disclosure part that you just can't frivolously go in and ask a clerk to hand out that information, because I don't think that's right. That's really my submission.

**Mr Grandmaître:** Thank you for coming down. We had an earlier presentation from the Quinte Labour Council, and I'm going to read you their recommendation:

"We strongly recommend that all citizens have greatly improved access to information through the creation of public information centres. This centre should be administered by the city clerk who should ensure that all public libraries are aware of the documents available at this centre."

Do you agree with this?

**Mr Batten:** I agree to a certain point, but I don't think, again, that the information should be just handed out or open to the public like that. If someone wants to find out if I have—let's say I have an interest in ABC Paving Co and they feel that ABC Paving Co has done some work for that township and I voted on it, then I think they should be able to come forth and explain why they're doing this. There's nothing wrong with that. But just to go in and say, "Eric Batten's sitting on council. I want to know his assets, I want to know his liabilities, I want to know this and that," in a frivolous nature, I think that's wrong. I think there should be some onus.

**Mr Grandmaître:** You agree that we should have a commissioner responsible for, let's say, accepting or rejecting these appeals?

**Mr Batten:** I think there should be a provincial commissioner and I think if a person wants that information, they should state to the commissioner why they want that and then the commissioner can address the clerk.

**Mr Grandmaître:** And it should be operated just like the freedom of information office.

**Mr Batten:** That's right.

**Mr Villeneuve:** Thank you, Mr Batten. You're probably aware of what's happened to some municipally elected people in the city of Kingston with a conflict-of-interest situation. Have you ever considered declaring pecuniary interest for whatever reason, as you're deputy reeve of Dummer?

**Mr Batten:** Yes, I have.

**Mr Villeneuve:** And you have backed away from the table?

**Mr Batten:** Yes. In our township, when you declare a conflict, you leave the room. That's a policy our council has.

**Mr Villeneuve:** We had Vaughan township representatives yesterday who came to Peterborough and told us—Vaughan's a very rapidly expanding municipality and there have been some problems, but we're now finding that the elected people are getting very gun-shy and in case there might be a conflict, they're declaring conflict, sometimes in a position that avoids them from taking a tough decision. Would you see that as a possibility coming up?

**Mr Batten:** No, I don't. I agree with the legislation 100%. I think it's time we should have this and we should have had it long ago. I think if you're going to sit on council, you should know, and if you have some doubts there are legal people you can talk to. You know, if you have them kind of doubts, then find out. You've got to be cautious, but I fully agree that this legislation should be passed.

1150

**Mr Villeneuve:** Access to the information that will be recorded would cost a fee under the freedom of information. You're satisfied that it's not an exorbitant fee, but it would cost a fee. You're satisfied with that?

**Mr Batten:** Yes, that's right because across the province we got land registry offices and we got different things that you can now go in and pay your fee and get a lot of that information. I think that people don't purposely try to abuse this, that they should have to go to a commissioner who understands the totality of the legislation and can advise that person and then advise the clerk. I think that's the way—and then the clerk would have the necessary information.

In other words, in my own case if I owned ABC Paving Co, then the clerk could say, "Yes, Mr Batten has registered with us that he's got a share in ABC Paving Co." That's information they should have. That's the purpose. I agree with that 100%. There's got to be some reasons though.

**Mr Carr:** Just a quick question. We're actually in the process now of doing our conflict statements. I actually kind of enjoy it because it's the first time. My wife does most of the work and does most of the finances. Once a year I actually see what we've got. Actually it's been going up. She's done a good job. As I said to the Treasurer, we should make her the Minister of Finance at some point. Maybe she will.

But there are a lot of conflicts that have arisen over the last little while. One of the concerns is that some of the things that have been put forward in this legislation are even tougher than we have provincially. I take it you're probably not aware of what the provincial members go through. Would you be able to comment on the situation, what we're doing as provincial members versus what we're asking you to do?

**Mr Batten:** No. I understand that the provincial members have to declare. We've discussed this. I'm not just sure what your legislation is provincially. I agree that, yes, it should be there provincially the same as ours.



I think that legislation is needed. I don't think people should be sitting in any jurisdiction or any board or anything and voting on their own interests. I think they're there to serve the public.

**Mr Carr:** Quickly—very, very quickly—we do immediate family: wife, in my case, kids, minor children. Would you go beyond that or what is your feeling? Would that be acceptable?

**Mr Batten:** That would be acceptable, yes: wife, minor children, yes. That should be about as far as it goes.

**Ms Haeck:** I appreciate your comments. Some of the municipal representatives who've come before this committee when I've had a chance to sit on it before have indicated that they were concerned because they felt that when they declared their interest, they had to also indicate their liability as in a dollar amount of a mortgage that they either owed to the bank or that they held and were obviously receiving as some sort of income. Are you aware that that's not the case, that in fact it's just that you have a particular interest? There are no financial figures actually; there are no amounts as part of the statement itself.

**Mr Batten:** Yes, I'm aware. I guess I should try to explain how I understand the bill. I'm not totally familiar, but I understand that if your wife or you have a liability you say, "Yes, we have a liability with such a bank or such a company." If you've got assets, "Yes, these are our assets." You don't put a value to them as much. I think that makes sense. My understanding of the total reason for this act is that people declare what they have so it's known and they don't try to violate the act. They don't vote on something that they've got a conflict in.

**Ms Haeck:** Very good.

**Mr Batten:** That went on for years and I'm glad to see this happen.

**Ms Haeck:** Thank you, Mr Batten. I think you echo a lot of concerns of residents from my area as well. I don't know if any of my colleagues have additional questions.

**Mr Wiseman:** I just want to clear up something that Mr Carr said. He said that your conflict of interest would be more onerous than ours. In fact that is not the case. I have the charts here. Have you seen these? These were mailed out to the disclosure of financial information.

**Mr Batten:** I don't think I've seen them. I have a lot of papers before my desk.

**Mr Wiseman:** Then it has a comparison of who has to declare what. This is what the MPPs have to declare. This would be what councillors would have to declare. We have to declare a lot of other things, including putting dollar figures in the whole process. I just wanted to clarify that—

**Mr Carr:** Which isn't made public, by the way.

**Mr Wiseman:** Yes, but this part of the discussion will take place later. I see this as a useful tool if the commissioner is set up in a way that would allow you to phone them and ask them if it's conflict of interest.

Now, since most of the councils in the regions have

solicitors, are you able to ask them if you are in conflict? Are they a useful source, or do you think that's not a good place to be able to get information?

**Mr Batten:** We have solicitors from Peterborough. What we do is go through the clerk. You'd go to the clerk and say: "Would you find out if I've got a conflict. I think I may, and here's why I think I may have a conflict." But if there's a grey area, we'd have the clerk find out from the solicitor.

**Mr Wiseman:** So then they would give you an opinion.

**Mr Batten:** That's right. It's simply an opinion. But I still think there should be a commissioner in charge of this. I feel it's important to control it properly.

**Mr Wiseman:** The other comment you made is that you leave the room. As soon as you declare a conflict you're out of there; you don't participate in any of the debate or anything like that.

**Mr Batten:** No. It's a policy within our council. I mean, you can go and sit in the crowd and you can probably try to intimidate the people by doing something, but we feel that you should leave the room. There's no law that says that; it's a policy we have accepted, that it should be done.

**Mr Wiseman:** That's something I would think that we should take a look at, because I know that in some jurisdictions they declare a conflict, then they sit there and participate in the debate and then say, "I can't vote," but they're part of the debate.

**Mr Batten:** Yes, and that can be very persuasive. If you've got a conflict, you should be out of there. That's my own feeling.

**Mr Wiseman:** Thank you for that.

**The Chair:** Okay, Mr Batten. We've run out of time. We thank you very much for taking the time to come from wherever you were to make the presentation to this committee today.

**Mr Batten:** I thank the committee for the opportunity, and it's good seeing you.

**The Chair:** This committee is recessed until 1:30.

*The committee recessed from 1159 to 1332.*

#### COUNTY OF PRINCE EDWARD

**The Chair:** I call the meeting to order, and I invite the county of Prince Edward, Warden George Vincent, Mr Brian McComb, and Reeve Bill Bonter. Welcome.

**Mr Brian McComb:** Good afternoon, and thank you. To introduce our delegation, my name is Brian McComb, the director of planning for Prince Edward county, and with me are Bill Bonter, the reeve of the township of Ameliasburgh, who will follow after some brief comments from myself, and Mr George Vincent, the warden of Prince Edward county and the deputy reeve of Hallowell township.

I've provided documentation of the presentations you're going to hear. I've also provided a copy of a letter from Mr Ken Cunningham, a planner with the Ministry of Municipal Affairs, which helped to clarify one of the issues we had with the bill, which is whether our newly adopted county official plan would be considered under

the old Planning Act or under the provisions of Bill 163, depending on the timing of what gets adopted or approved first. That letter is there for clarification purposes.

I wanted to be brief. The comments are provided to you in writing. I wanted to emphasize what I felt are the major points. Then Mr Bonter and his municipality have points of departure with the opinion of the county planning department and the county planning committee on a couple of issues, and he wishes to speak to you with regard to those. Then George will follow up with comments from his planning experience on local politics for 20 years or so.

I don't know if you've got my written submission, but the first point I want to make to you is on page 5 of my staff report, which follows the letter from the warden. When you read Bill 163, it's very clear that when planning in Ontario you're to have regard for provincial direction. The two stated purposes of the act are to provide for a land use planning system led by provincial policy and to integrate matters of provincial interest in provincial municipal planning decisions.

Absent from this section, section 4.1.1, is any reference to the importance of interpreting or adopting provincial policies to the local circumstances by locally elected politicians with the input of the local people. We feel that a purpose of Bill 163 should be to clarify this and state this clearly, that there is a role for local input, local decision-making and interpreting the provincial direction into something that fits the local circumstances and meets with concurrence by the local politicians and people.

The second point is with regard to municipal planning authorities. There is a concern that the legislation as drafted with regard to municipal planning authorities could have the effect of disempowering county governments, county plans and county planning programs as opposed to the goal of empowering, as being enunciated by the province.

Allowing the creation of municipal planning authorities that do not have to contribute to the county planning levy, that can form their own land division committee and constitute a body corporate, could be detrimental to county planning. If, for example, one or two municipalities decided to depart from the county official plan in Prince Edward, it would have a drastic effect on our budget and would also have a drastic effect on the county plan.

When looking back at the Sewell commission final report, there were criteria there that I felt were appropriate, including that affected counties that have an official plan shouldn't have municipal planning authorities established therein, or at least that the county should be approving the absence of one of its municipalities going into a municipal planning authority.

The third point is that when you read Bill 163 it seems clear that counties are not being empowered in the same manner as regions. One example is this whole issue of municipal planning authorities. You don't see that as an option within regions, but it is an option within county structures.

Other examples are that regions are the approval authorities in respect of the approval of an official plan of a local municipality, and regions are the approval authorities in respect of the approvals of plans of subdivisions, whereas counties generally are not, unless they've already been delegated and unless they're in the county of Oxford. Section 17(2) should be amended to add counties which have an official plan as an approval authority with respect to local plans. Furthermore, section 51(1) should be amended by making counties which have an official plan as an approval authority with respect to plans of subdivisions.

The other point I wish to make is the whole emphasis on upper-tier planning and county planning. I believe a county official plan is something that all counties should be striving for. The reason I say this is because there is a lot of concern that Bill 163 and the comprehensive policy statements that accompany it are very much a top-down form of planning. I feel that the only way counties and municipalities can grapple with that is to develop their own county official plan.

Our municipality developed an update of our current official plan last year, and we feel that we benefitted from not only reviewing and upgrading our document but also coming to terms with the provincial agencies about what our county consists of. In many respects, the people who live in the community know their area better than the provincial staff do.

I think county planning should be something every county should be striving for. A county official plan is important in identifying what the community thinks is significant and what the community thinks is important in terms of natural environments to preserve and protect. That should be with the input of the provincial agencies, not just dictated by them.

The last point I wish to make is just from a general point of view, on page 8 of my report, at the bottom. From my overall reading of the bill and from my first glance at some of the guidelines that are starting to be generated to interpret this, I think we're creating a system that's going to complicate planning in Ontario. People are going to be more confused than they currently are. There's a fear that owing to its size and sometimes confusing wording, Bill 163, together with the Planning Act, is going to be open to even more interpretation and more confusion. I'm not sure that was the direction this whole exercise was supposed to take.

Those are the comments I wish to provide. Bill Bonter, township of Ameliasburgh.

1340

**Mr Bill Bonter:** Thank you very much for entertaining my submission today. It's simply in regard to section 14. Our township diverges from the county's critique on this matter. We believe that flexibility should be left in the act as it's presently written in regard to the formation of, and the fledgling groups that are forming around, communities of interest.

We are a member of the greater Quinte area, and in that group we represent a population that is far greater than the county. There's Ameliasburgh, with around



5,500 people; Sidney, with a population of 17,000 people; Belleville, with a population of 35,000; Trenton, with a population of 15,000; and Murray, with a population of 7,000. We have come together out of necessity to answer needs in regard to planning, community development, community policing—a number of issues that are not being delivered to what we think is a standard our constituents deserve. We think these fledgling institutions could develop a planning body if the flexibility remains in the planning document to consider these groups.

The basis of our presentation is to stay with the flexibility in the document. I think the 1990s and beyond are going to require that kind of approach to deal with the problems of circles of interest that have formed. Even though we have a county system that was developed as much as 150 years ago, there's been a tremendous change in the commercial and in all aspects of our culture and society, and we believe the flexibility that you have built into the document will address this in the future. It will allow the fluidity and evolution that's required in planning in a modern society that's moving as fast as we find ourselves today. Thank you very much.

**Mr George Vincent:** Mr Chair, members, ladies and gentlemen, thank you for the opportunity of speaking to you today. I guess you haven't had a chance yet to read the letter we circulated regarding our concerns about Bill 163. I would like to point out that I have been involved with the planning process, in one form or another, for over 30 years. I started in our township council in 1962. We at that time were part of a joint planning area with adjoining municipalities. We went from that to having our own township planning board, to having a county planning committee that was an appointed committee, to what we have now, which is a planning committee made up of members of county council. This committee plans for the whole county.

I have to disagree with my friend to my right, Mr Bonter, in that I feel the situation we have now, the system we have, while it's not perfect, is the best of the four that I've been involved with in the past. It has representation from all municipalities, large and small. In this time, when the impetus seems to be along the way to larger units in municipal government, Bill 163, when it reflects on planning—my version is that it's making it possible for smaller units, is advocating smaller units of planning.

I don't feel this is in the best interests of the county, and I'm speaking as warden of Prince Edward county, because it's a small county and there is some difference of interest within the county. I don't think it's that serious to require everybody to go off in a different direction with the planning process. You drive down a road and you have a different rule on one side of the road than you do on the other side because there's a different municipality.

Also, I think it's more economical in terms of cost to the taxpayer with a county system than it is with a local system. One municipality in the county, that had its own planning system in place after the county system was active, was spending more money from that one municipality in total cost to the taxpayers than the county system was costing.

For over 20 years, Prince Edward county has had a county planning system, a county planning board. It has functioned well. We produced an official plan in 1974, which was sent forward to the minister, and finally approved and came into effect in 1977. We have now produced a second, new official plan, which went off to the minister to Toronto in November of last year.

I think we have tried our best, and we have a system that is working for Prince Edward county as efficiently and as economically as is possible. I personally think it's a regressive step backwards to start splitting the planning process down into individual municipalities. I thank you for the opportunity to make my feelings known.

**Mr Eddy:** Thank you, your worship and members of the delegation, for presenting your views today. You've accentuated the views and concerns that many others have. I wanted to be clear on planning in Prince Edward. Is it a two-tier system of planning or is it a county official plan? Some local municipalities have their own plans? All of them have their plans? Does the county do district plans for them? I just want to be clear.

**Mr McComb:** We have a county official plan, and there are secondary plans which constitute part of that county official plan for the village of Wellington, Picton township, Hallowell urban area, and the village or hamlet of Rossmore. But those are secondary plans and they constitute part of the county plan, so it's pretty well a one-tier official plan.

**Mr Eddy:** That's probably simpler than what will be in many places.

You've mentioned the wording "be consistent with" versus the present "have regard to." A person who appeared before us the other day suggested that the words could be changed and might be better changed to "maintain the spirit and intent of provincial policies," viewing that that would give local communities or counties etc a bit more flexibility. We're told that the words "be consistent with" does give some flexibility, but there's concern that there wouldn't be flexibility with those words. What is your view of this other proposed wording?

**Mr McComb:** From first reaction, I think that's excellent wording. I haven't heard that run by me before, but that does maintain the spirit of the concerns our council has had up to now. The other thing I've read or been exposed to with regard to this issue is a draft report of the AMO, and it references the planning system in Manitoba, where once you get your official plan, that supplants the provincial directives within the planning act in Manitoba. In other words, if you develop your official plan and you develop your principles and priorities and goals and objectives with regard to planning, that's clearly the system you work by, and not necessarily the overall general ones within the comprehensive policies.

I would think that both of those things would be complementary to each other.

**Mr Eddy:** Your concern about the fragmentation of county planning is very real also. Every county that's come before us has spoken against allowing the organization of municipal planning authorities. I understand your views on that and support them.

**Mr Bonter:** I would like to add that fully 80% of our taxpayers commute to the Belleville-Trenton area for their jobs, and this is one of our arguments, that we are part of that community of interest. For a document to become too inflexible for us to consider the attributes of a planning body that would have in excess of 100,000 people in it is not fragmentary or destructive in any way.

We're trying to address the problems, the modern problems that have manifested themselves, in a well-planned way, and the greater Quinte area is trying to deal with those problems. We're not trying to dismantle or destroy any good planning.

**Mr Eddy:** I see the advantage of a municipal planning advisory committee that would include Trenton, Belleville and some of the other areas. Could that work and still have county official plans?

**Mr Bonter:** I don't know. I think there needs to be the flexibility that's in the present document.

**The Chair:** Mr Carr.

**Mr Eddy:** With its own official plan?

**The Chair:** Sorry, Mr Eddy.

**Mr Eddy:** That's okay.

**Mr Carr:** Thank you very much for a very comprehensive presentation. It was very detailed.

1350

In the interest of time, because you each brought a different perspective, depending on your qualifications, I wanted to ask a very simple question of each of you and then maybe start with the warden and move right across. If this bill remains as it is and you were Gary Carr and got to vote on it in the Legislature in the next reading, would you vote for or against the bill?

**Mr Vincent:** I'm afraid without amendment I would have to vote against it.

**Mr McComb:** I would vote to slow it down and review it more closely, especially when you look at the full package, because there's also a lot of stuff you don't know yet in terms of the guidelines and regulations that are being generated. It's not a comprehensive package right now, and that's what you're supposed to be striving for, so I'd say slow down.

**Mr Carr:** We can't say, "Slow it down."

**Mr McComb:** Well, that means no.

**Mr Carr:** That means no.

**Mr Bonter:** I find myself in a similar position. I like the greatest part of the bill. I like the flexibility that's been built in to address a modern society in the 1990s and beyond. There are a few issues that might be reworded but basically I'm quite comfortable with it.

**Mr Carr:** So, two noes and a yes.

**Mr Bonter:** Yes.

**Mr Carr:** It's ironic that the elected person said it shorter than the two people who aren't elected, and politicians—

**Mr Bonter:** I'm elected.

**Mr Carr:** Sorry. Okay. But you were in the planning as well. So we got two noes and a yes.

The part about the confusing legislation that you

outline here, I think most people would say that if anything that made it more confusing, because quite frankly it is to all the people right now. When you talk about it being more confusing, we're going to take a step backwards then in terms of—I guess I should ask this to the warden because his name is on the actual document. What did you mean when you said it's going to make it a little bit more confusing?

**Mr Vincent:** I should add that besides being a politician I've been in the real estate business for nearly 25 years. I'm a broker and I've been involved in real estate sales in jurisdictions other than in the county of Prince Edward.

When you get into some of these other areas and each local municipality has its own official plan, it's bad enough when you've got one zoning bylaw on one of the side of the road and another one on the other side, and there are two properties for sale across the road from each other and what's allowed here may not be allowed over there. But then, when it comes to the planning stage and you've got one municipality and another municipality, it becomes more confusing and more irrational. You've got identical properties here and there and there's just a 66-foot right of way roadway between them. Why do the rules for this one have to be so much different from this one?

This is what manifests itself when you get into local planning. We've got municipal councillors in our area who I think would expect us to amend the official plan to create a lot where the owner had to climb down a rope to get to it.

**Mr Carr:** Thank you very much, all of you, and good luck.

**Mr Paul Johnson:** Thanks very much for making your presentation before the committee on behalf of Prince Edward county, and of course the township of Ameliasburgh. Exactly the reason why we're holding these hearings is so that individuals like yourselves can come before this committee and offer us suggestions as to where you see weaknesses maybe in the legislation, things that you would like to see amended. Indeed, from time to time I hear people say that they wouldn't support this legislation unless there were some amendments, and that's what George said.

One thing that wasn't mentioned—I'm curious to know this, because I must admit that many elected representatives, and of course, Brian, this will exclude you, although most certainly you may have an interest—what do my friends from Prince Edward county think about the conflict-of-interest disclosure issue part of the bill? Are there some opinions, and if you have them I just wonder if you could share those with the committee today?

**Mr Bonter:** Refer them to the warden.

**Mr Vincent:** Okay. We've got about six or seven weeks to find out, but I know some present members of council, good politicians, good members of local council who have said they will retire from politics before they will conform to the rules of the conflict-of-interest legislation.

**Mr Paul Johnson:** I've got to interject and say that



the other thing I'm aware of, of course, is that there is some misunderstanding about what exactly the details of the disclosure are. I think that creates some unnecessary fear of that. However—

**Mr Bonter:** I might ask you a question. In the first part of the act, and I don't know if that's been changed, the exact financial disclosures have been eliminated.

**Ms Haeck:** Yes. There are no amounts.

**Mr Bonter:** I think that goes a long way towards making people more comfortable with it.

**Mr Paul Johnson:** I get the sense the public really wants to know whether its municipal politicians, whether any politicians are indeed in conflict of interest within their jobs.

**Mr Bonter:** I am not a student of the act, but on our initial review of the act, when it was first brought before the readings, it was that concern that worried us the most, that it was too invasive on a personal level and not necessary to ensure the integrity of a politician.

**Mr Wiseman:** I'd like to take up the comments that you made about "shall be consistent with" as opposed to "will have regard for." We have heard people who have said it should be even stronger than that. We have heard people say that it should be "will conform to"; we have had some environmental groups say that if you're going to water it down as far as you are to "shall be consistent with," then it should be "shall be consistent with and conform to."

This issue seems to be breaking into very clearly delineated camps. The public, ratepayers, environmentalists and John Q. Public who is not associated with anybody are in favour of "shall be consistent with." Councils, planners and developers want "will have regard to." My own personal experience is that "will have regard to"—you can drive a Mack truck through any of the regulations. The reason you have on opposite sides of the road these different zonings is because of the different interpretations and different latitudes within the context of "will have regard to."

The issue for me is, so that the public, so that ratepayers and so on can act as a check and a balance in the system, how do you get rid of the kinds of ambiguities that exist when you say: "Maybe this council will have regard to it; maybe that council won't. Maybe we'll do this; maybe we won't"? What I am hearing from the public is, "Get rid of the 'maybes' so that I know what my role in the whole process is."

**Mr McComb:** It's kind of a difficult question but I'll try and approach the subject. I think where the trouble begins is in a reliance on a provincial document in terms of, "These are the rules." I think planning is an evolutionary, educative, progressive thing. Planning was at a certain state in Prince Edward county in 1977; it's at a different state now. It takes exposure to the document, it takes exposure to seeing severance applications, rezoning applications, official plan amendments, to get comfortable with the planning process, to get comfortable that yes, there is some logic as to why there are regulations and some time to become familiar with what those regulations are and maybe how they should evolve and develop.

I think it eventually has to be a community thing. It has to be a community official plan and it has to be community decisions. I think that's where we're coming from, that if you take a provincial document and, depending on who the staff of the day are and how they interpret "consistent with" or "regard to," it's the local autonomy, the local ability to make decisions. If there are people within that local group who disagree with the decisions the council of that day has made, they have an appeal process, and then you have an OMB hearing to decide what is the best planning interest here. Is it this appellant or is it this county council decision? So I think the framework is there, together with the Ontario Municipal Board, to address issues that ratepayers can have.

1400

**The Chair:** We've run out of time, unless there are other responses.

**Mr Bonter:** I'd just say that I agree fully with that. In my experience in municipal politics I have watched the planning aptitude of the constituents improve considerably from, "This is my property and I can do whatever the hell I want with it," to the 1993 consensus that we have community concerns. Most people come to this system with that kind of education and it should be, "Leave the flexibility to the local people." We are making the environmental considerations and in most cases we are doing excellent planning. If you put edicts down, you cause more backlash and you get the opposite effect: less good planning.

**The Chair:** Thank you very much. We've run out of time. We appreciate your coming and sharing your views.

DAVID HAHN

**The Chair:** We invite Mr David Hahn. Welcome, Mr Hahn.

**Mr David Hahn:** Good afternoon. Thank you very much for the opportunity to come and speak to you. I have to say I don't have a printed version here and I'm sorry that you're going to have to listen to me and not focus on anything in front of you when I talk. I'd like to make a fairly brief presentation and then engage in a dialogue with you, if you are so inclined, about some of the matters I'd like to raise.

First of all, I'd like to introduce myself. I am speaking as an individual today but I have been a politician in Frontenac county. I'd like to tell you about some of my experiences of planning in this rural eastern Ontario and then I'd like to mention some of the changes that I think would improve this package of legislative and administrative reforms.

I live in Bedford township in Frontenac county. Frontenac is said to be the county of 1,000 lakes and Bedford may be the township of almost 100 lakes. It's a township that has more cottage residents than any other township in eastern Ontario, so tourism and cottaging are quite important to us in our township. Our lakes have attracted a summer population of about 5,000, which sort of multiplies the winter population by about five times.

I've served on the council of Bedford for six years, including three years as reeve. I've served on the county planning committee of Frontenac county and served on a

committee that's considered developing a planning department, an OP for Frontenac county. I've also served on the steering committee of the Rideau Lake study under the auspices of the Rideau Valley Conservation Authority. I've served on the board of the Napanee Region Conservation Authority, the Cataraqui Region Conservation Authority and the Kingston, Frontenac Lennox and Addington health unit. I've chaired the Collins watershed steering committee for the Cataraqui conservation authority. I've also chaired the Bedford planning advisory committee during a two-year-long process of developing a new official plan there.

In my experience, I've seen deteriorating environmental conditions in the region, including lakes where tourist operators now fear future loss of business because tourists just aren't coming back to the lakes, because by late summer the lakes are in such miserable shape that nobody wants to be around them at all any more. I've seen, in some areas more so than others, particular deterioration of some of the most important environmental assets, in particular the lakes.

Unfortunately, these negative environmental impacts extend beyond the boundaries of the municipalities responsible for planning decisions. Natural systems don't respect municipal boundaries. We tend to get things spilling over from one lake down through the watershed into other jurisdictions. Furthermore, the impacts extend to future generations' enjoyment of natural heritage.

For all these reasons, I think it's essential that the province declare an interest in this area and declare the policies to protect our shared natural heritage, as it is attempting to do in this package of reforms.

On the other hand, I've also seen the frustration and the economic loss felt by people who wish to develop their land and see their proposals tied up for years by bureaucratic approval delays. To me, it's clear that the present planning system neither protects environmental resources adequately nor promotes development in a reasonable way so that people can have clear expectations about how their applications for development are going to be dealt with and what kinds of outcomes they can expect from them.

I think that the government's package here is a worthy and responsible initiative. It's bold and imaginative and it offers hope for a much more effective planning system for Ontario. I'm hopeful that the policy statements will ensure more protection for our environmental assets and I hope that the devolution of planning authority to upper-tier bodies will reduce bureaucratic delays and expedite careful approvals.

Nevertheless, I do see several serious weaknesses in the package. The risk I'm concerned about that I'll focus on here, I think, is that adequate citizens' rights to appeal these planning bodies' decisions will be prevented by what I see as three elements in the package.

First, citizens will no longer be able to appeal minor variances to the OMB. Minor variances, it's suggested in the little planning book here, will deal with things like porches and minor adjustments to lot lines. In fact, minor variances deal with a whole lot more than that out in Bedford township. In Bedford township you can minor-

vary a 100-foot setback from a lake down to a 40-foot setback from a lake, and that happens all over the place. Also, you can vary the size of a lot. If you have a requirement that a lot in the zoning bylaw be 0.8 hectare, you can vary it down to whatever the committee thinks is a reasonable and minor variance consistent with the whole thing.

In fact, now I think there are some constraints on what minor variances are allowed because there is an appeal to OMB possible by citizens. If citizens lose that right, I think there'll be one less constraint on municipal governments requiring them to be responsible in their use of minor variances. I fear you'd get a sort of ready recourse to minor variances and you may produce a whole pattern of development which contradicts the goals and objectives of the official plan. That's something that I would have no doubt in predicting would happen, in particular in some jurisdictions. I know some planning jurisdictions are more, perhaps, responsible than others, but some of them would definitely do that, I think.

The second area that I'm concerned about is that in the proposed legislation it says the approval authority may refuse to refer a requested appeal to the OMB for any of four grounds that I would take to be very subjective. This is section 29, clause (a). I won't read them all, since you're familiar with them, but I think that any one of them can be subjectively interpreted to consider a particular attempted appeal unworthy of going on to the OMB. I would like to strongly recommend that this whole clause (a) be deleted. I really can't see any reason for it.

On the other hand, I think it's very important to expedite the matters of appeals to the OMB and it's perfectly reasonable that the OMB should do some more dismissing of frivolous and vexatious appeals. I think there are far too many appeals going to the OMB. I don't have any doubt in saying that, but I don't think it's appropriate that the body which originally made the decision should be the one that makes the original ruling, the first ruling on whether or not it's a serious planning matter that underlies the objector's complaints here.

The third area that I'm concerned about is that there is no provision for intervenor funding for appeals to the OMB. I know this has been a contentious issue and it arouses a lot of concern when the idea is raised. I too don't want to see everybody's appeals funded, but I think there are ways that the OMB can set priorities and develop a system for assessing which appeals are meritorious and can consider funding from the government.

As we're developing a new system that places more authority in the hands of municipalities, devolves more responsibility down to them, it becomes even more important that citizens have adequate recourse to an appeal body such as this, not less, so I think it's important that there be some improvement in the package in this regard.

In general, it's my experience that full citizen rights to appeal to the OMB help keep councils more responsive to citizen concerns about planning and development issues. I think if this right to appeal is weakened, councils may feel freer to act more arbitrarily than they do even now.



I could have commented on a pile of other things but I thought, given time constraints, I'd just pick out those particular concerns. If you'd like to ask questions, I'm finished.

1410

**The Chair:** Okay. Mr Carr, there's just about four minutes, so it's literally one minute per caucus.

**Mr Carr:** I'll be very quick then, although the answer may not be.

You talked about the OMB and you talked about some of the problems. As you know, with the backlog, everybody's upset with it. With your experience, how will we deal with the problems? You wanted the ability of people to appeal, but the backlogs are such that people are frustrated with it.

**Mr Hahn:** I think there are all kinds of new procedures under way now at the OMB. Alternative dispute resolution mechanisms are the obvious thing. We should promote alternative ways to resolve disputes even before it gets to the OMB, and then when it does get to the OMB, the OMB should be involved in different methods of resolving things so it doesn't actually get to a full OMB hearing.

Furthermore, I also support the OMB having discretion and exercising more discretion to not hear all kinds of cases which I think are frivolous and vexatious and not made on good planning grounds.

**Ms Haeck:** You're actually mirroring a number of concerns raised by my own constituents, particularly in relation to minor variances. One thing that I have advocated as part of these hearings in discussion with deputants is that there should be a very clear definition of what a minor variance is so that everyone is clear that it's not just doubling intensity. It should be minor, as in three inches of a porch being an overhang or something like this. How do you feel about that proposal, that it should be much more clearly outlined than what it is today?

**Mr Hahn:** I think it sounds like a nice idea, but I also know that there are a lot of cases where in fact because, for example, a lot on the lake has been created some time back and now doesn't conform to the current bylaws, you have to give a minor variance that would exceed this sort of fine definition that you'd give. So I think you'd probably have a really hard time trying to define it that way. I don't know what the answer is, except to maintain the right to appeal.

**Ms Haeck:** Okay. I appreciate that.

**Mr Eddy:** I'm glad you said those last words, because I was looking for a solution. So you think the right to appeal minor variances should be maintained because municipalities sometimes are dealing with not minor variances but indeed major variances.

**Mr Hahn:** Yes, I think so. I think that if a neighbour comes and objects to a minor variance of 10 feet and it seems pretty clear to the OMB that it's frivolous, then they should just dismiss it immediately.

**Mr Eddy:** Because of your concern about deteriorating environmental conditions, I think I heard you speak in favour of planning on a watershed basis.

**Mr Hahn:** Yes.

**Mr Eddy:** Do you think the conservation authorities should be involved more with watershed planning? How do you think it can work so that there's more input into municipal plans?

**Mr Hahn:** I think the conservation authorities have a very significant role to play. The only reason I think we'd hesitate to recommend that they are required to do that is because they don't exist all over the province. But everywhere that they do exist, I think they have a very important role to play here.

**The Chair:** Thank you, Mr Hahn, for sharing your views with this committee and for coming today.

THERESA KELLAWAY

**The Chair:** Ms Theresa Kellaway. Welcome, Ms Kellaway.

**Ms Theresa Kellaway:** How do you do? Mr Chairman, members of committee, ladies and gentlemen, I have been observing municipal politics for several years and have on many occasions been appalled at the abuse and, in some instances, the total disregard of the conflict-of-interest act. The present act indeed puts a politician above the law. The financial burden that it puts on the citizen is such that only a very few can afford to see justice done.

In 1988, I got a legal opinion from an expert on municipal law, Mr John Judson of London, Ontario, regarding the sale of city-owned property in the core of our city. Three members of council owned property in the same area, but no disclosures of conflict were made. Mr Judson stated in his letter: "I have no hesitation in giving my opinion that the persons in these circumstances have a conflict of interest pursuant to the act, which they should be disclosing." There was no way that I could fulfil my civic duty, because the costs would have been astronomical.

I am pleased to have the privilege of addressing this committee on this issue, which hopefully will remove this heavy financial burden that has been placed on the citizens.

In this bill, Bill 163, under section 6 of schedule B, I fully agree that full, written disclosures should be filed with the clerk, including any and all connections with numbered companies, and certainly if the politician is the "in trust" which appears on so many deeds and documents.

In section 7 of schedule B, I would strongly suggest that the commissioner's position be advertised and hired through an interview process by the Ministry of Municipal Affairs and that the provincial member of the area is not consulted in any way, thereby eliminating any perception of favouritism or nepotism. The hiring process should be done at arm's length or we will end up with patronage appointments such as we have on police services boards. The last one appointed in our city did not even know what time the meetings were held. The commissioner must be unbiased, understand the act explicitly and not be a political puppet.

I disagree with the Association of Municipalities of Ontario's position as stated on pages 4 and 5 of the April

15, 1994, bulletin, Municipal Alert: "It is the association's position that if municipalities are going to pay for policing their own members, then they should have control over the body delegated to perform this duty. Once the commissioner has completed his or her report, the association believes that a tribunal of municipal members of council and local boards should be created to deal with it."

The municipalities are paying, they say. Well, that is the citizens, not just members of council. It is the citizens who foot all the bills, not the municipal council. If this committee follows AMO's position, you are indeed putting the fox in with the chickens.

At a city council committee meeting on July 20, 1994, a councillor made a motion regarding an official plan and zoning bylaw amendment. The motion was seconded and passed. Immediately following, the committee then went into a planning advisory committee meeting where the councillor disclosed a conflict regarding the issue he had made the motion on. At this meeting he seconded a motion on the issue, and not one word was said by anyone. The councillor is in his third term on council, so inexperience could not be an excuse. I would have to question the viability of a tribunal of municipal council members in judging one of their own.

In part IV of Bill 163 regarding section 55 of the Municipal Act, which deals with open meetings, I would like to inform you that in our city there is a closed meeting before every biweekly council meeting, and on several occasions they return to a closed-door meeting after the public meeting adjourns.

In December 1991, the council met behind closed doors to appoint members to committees and boards by secret ballot. After doing so, they declared it a public meeting at approximately 11:30 pm, nearly midnight, and they passed the resolutions confirming these appointments. The city hall doors were locked to the public. So much for public meetings.

When questioned by a citizen regarding the validity of the resolution, the council got an opinion from the city's solicitor. He stated: "Council may wish to consider refraining from taking a secret ballot in the in-camera sessions on the basis they are prohibited by the Municipal Act and may give rise to the appearance of fettering council's decision, even if not actually binding on council." It sounds like a Scotch verdict: "Not guilty, but don't go out and do it again."

Citizens are sick and tired of the excessive secrecy of governments, and hopefully Bill 163 will curb some of it on the municipal level. Patrick Henry, an 18th century American statesman, said it all in his statement: "Public business is the public's business, and to cover with a veil of secrecy the common routine of business is an abomination in the eyes of every intelligent man."

1420

In closing, I would like to say I do not agree with delegating approval authorities to municipal levels and would like to congratulate the people involved with drafting Bill 163 and not giving too much control to municipal councils.

To add something to my deputation, I would also like to include a letter to the editor in this morning's Toronto Star. It's very short.

"Paradise lost while folks asleep: There is a disheartening postscript to my September 6 Opinion page article, 'Eden Mills: There's trouble in paradise.' In the early hours of that very morning, even while the copies of the Star containing my piece were being printed and distributed, at 2:15 am to be exact, the council of the township of Eramosa passed a motion to demolish the old bow-string bridge in Eden Mills and to effectively widen the road through the village.

"It would have been less difficult to understand if the decision was taken with full disclosure to and input from the public. Instead, it was done in the following circumstances:

"The matter was not on the agenda;

"The motion was brought to the fore under the guise of 'unfinished business';

"The reeve had announced several days earlier that no representations would be entertained from the residents of Eden Mills if and when the issue was revived;

"No formal notice was given to any of the interested parties that this motion would be revived on this day;

"The motion was delayed until 2:15 am, a time of the morning when members of the public tend to be in bed and unaware of what their elected politicians are up to.

"What is there to hide? Why under cover of darkness, metaphorically and otherwise? I can think of only three possible reasons. Shame. Vested interests. Lack of due process."

This is from a Mr Singh in Guelph, and I think it says it all. Thank you very much.

**The Chair:** It's time for a few questions.

**Ms Haeck:** I very much appreciate your comments. You echo those of many people in my own area, and I know these kinds of concerns are definitely part of a larger community, as you've just read there. I personally want to thank you for your presentation. I think, Mrs Kellaway, you've been extremely explicit. There's not an awful lot more I think I personally could add to it.

**Mr Curling:** Mrs Kellaway, I also want to thank you for your presentation. Your concern should be well noted. I think that politicians must be accountable, and of course revealing exactly, as you said—

**Mr Perruzza:** How about bureaucrats?

**Mr Curling:** Also, people who are responsible for public funds and public investment should be accountable. I agree with that, and specifically, as you say, about politicians being accountable, we're dealing with that part of it.

However, the question was asked earlier on today, and I just want to put it to you too, that when someone declares an intention to run for political office and they say that more than the immediate person involved should declare their interests, do you feel that aunts and uncles or brothers and sisters should also declare their interests if they are relatives of the intended politician who is going to run?



**Ms Kellaway:** No. I don't think that people that far out should have to declare. I think the candidates themselves, their spouses and children should have to declare. They should have to declare, as I stated in my presentation, if they are involved with numbered companies, and I've put enclosures in with my deputation where you will see one transaction where it is "in trust." Those are two words that are hated by anyone who is trying to get some justice in this municipal business.

I think if I were a politician on the municipal level, I would declare what I had and what my spouse and my children had, but if I were at a meeting where I thought something was going to be discussed that an aunt or an uncle or someone was going to benefit from, I think I would declare. I would make a disclosure of conflict because there could be a possible chance that people would think—and we must have it so that there is no doubt, that there are no backroom deals being made.

Therefore I think it would be up to the individual politician, that if they felt that some member of their family outside of the immediate family was going to benefit or lose from it, they should decline from voting or discussing it.

**Mr Carr:** Thank you very much for a great presentation. You did an excellent job and a great presentation. As a matter of fact, as I was sitting here I was thinking, "Here's probably somebody"—you were talking with such passion—"who would be great to run for council." I don't know—it's coming up—if you've decided whether you're going to run or not, but—

**Ms Kellaway:** Well, I will tell you from my own personal experience, to run for council, when you sit behind that panel, you have one voice. I can go to the podium on the far side of the railing and I can say many things. I probably might say them if I was on the other side, but I'm sure I'd be squashed by everybody else who's there.

They refer to me in the local paper as an activist. The saddest part of it all is that you have to take the brunt of all the remarks from most newspapers because they feel you are nothing but a disturber and all you do is find problems. And when they ask me if I would I run for council, I say I haven't been pleased with my church for the past 10 years but I'm not running for Pope.

**Mr Carr:** I get the feeling you're not going to be squashed by anybody, so I don't think you need to worry about that.

**Ms Kellaway:** I hope not.

**Mr Carr:** One quick question—I think I have time—on the particular case you talked about on the front there with the three council members: Were you involved in that decision personally or is it just that you've been watching and following?

**Ms Kellaway:** No, I was not involved in any of the properties or anything.

**Mr Carr:** You just followed the reports then.

**Ms Kellaway:** Yes. At an in camera meeting, a behind-closed-doors meeting, we had almost lost our prime piece of waterfront to developers that wanted to put two 21-storey apartments there, and we formed a

committee and saved our waterfront. In doing so, I discovered that there certainly was a conflict-of-interest act that was being abused dreadfully, and when I discovered that, I thought someone had better keep their eye on things.

**Mr Carr:** Good for you. Good luck and keep up the good work.

**The Chair:** This committee would like to congratulate you on your activism and we all hope that it will continue for a long time.

#### COUNTY OF HASTINGS

**The Chair:** We invite the Hastings county planning advisory committee, Dr Allan Leal and Niall Carney. Welcome.

**Dr Allan Leal:** Thank you, Mr Chairman, committee members, ladies and gentlemen. Earl Hewison, who is the reeve of the village of Frankford in Hastings county and the chairman of the county planning and land division committee was to have made this presentation, but he is unavoidably absent due to a commitment in western Canada. So what you're going to hear is the voice of Jacob but the hand of Esau.

I've also, however, been astute enough, because of my own limitations in the area, to bring along with me Mr Niall Carney. Mr Carney is the county planning director for the county of Hastings, and I want to say publicly that it is regarded by us all as a privilege to have Mr Carney in that important position. Indeed, it may even be a rare privilege. But he is here to give an air of verisimilitude to what otherwise might be a most unconvincing tale.

**Mr Perruzza:** The statue is on the way.

**Dr Leal:** Exactly. Your secretary to the committee has been good enough to solicit copies of the presentation and to distribute them. If you would look at me and not at the script—I don't want to interrupt your reading, and where I depart from the script, I'll say so, so you'll know what is truth and what is non-truth.

Hastings county has a population of about 62,000 people and has been an advocate of and involved in community-based planning since 1970. It adopted its first county official plan in 1974 and a major revision in 1985. Now, the official plan covers the whole of the county with the exception of one important municipality—one of the local townships, Sidney township, is not part of it—and the planning process is being continuously updated. It's principally a policy document which is implemented through the action of local councils—I have the privilege of being reeve of one gentle village—by rezonings, severances and plans of subdivision, and it does represent the views of the constituent municipalities as to how change and development should be achieved.

1430

I depart temporarily from the script to say we tend to lose track of the fact now and again that in the origin of things, the business of land use control was purely a question of the law of nuisance, expressed in Latin, which I translate into English, and you were not to use your land so as to hurt the land of your neighbour. That's where it all began. Then you came into the 19th century,

when the whole or most of the city of London was built, planned, adorned with what they called squares, and you've heard of them all: Berkeley Square, Leicester Square, Trafalgar Square, Cadogan Square. All of these were put together through the instrumentality of what we lawyers know as the restrictive covenant, which was not government-related in any form. And what a fine job they did. Then of course it was realized eventually that the law for the rich did not also apply to the poor, so government had to intervene to give the same advantages to the lower strata of development. That's where planning started. It came into force in Ontario with the Planning Act, the first one, in 1948 through the late Dana Porter.

I give you that term of reference simply to remind myself and the committee, with respect, that sometimes we get carried away by what can be accomplished by an overpaternalistic approach at the upper level. I mean no offence, but that is true. I'm concerned about it. Everybody who has taught this, as I have, or thought about it at all will also feel the same way.

Anyway, dealing with policy first, if I may, the policy documents or policy statements, which regrettably are not before the committee, appear very detailed and they will prescribe how we are to plan in the future, leaving very little option for local circumstances to be considered. Instead of making policy to govern ourselves, we will be merely administering policies which perforce have been imposed upon us, and certainly imported.

Two actions are obviously needed. The first one is to make sure that the policies are sound, reasonable, fair, just, equitable, and in order to achieve that desideratum, of course they ought to be reviewed in the very near future.

The other thing that is required, in the submission of the Hastings county council members, is that the wording or the phrase "shall have regard to," which was and is the principle of the current Planning Act, should be retained and should not be replaced by the words "shall be consistent with," which appear in subsection 6(2) of Bill 163 and propose to amend the Planning Act subsection 3(5).

I would like again to depart briefly from the script to say that I have conceptual difficulty with what is proposed in making the policy statements have the force of law, because that is what the proposed change and the phraseology does. These are, and I say this with the greatest respect, the articulations of a single minister being advised by other ministers being advised by informed civil servants being advised by decent human beings, all of those things, but they are not legislative instruments. They're brought into force by the fiat of the Legislature in the act, which says that when the omnibus bill, Bill 163, comes into force after having been given third reading, the policy statements themselves will come into force as well at that date. They are not law. They are not subjected to the legal process. And by the legal process I don't mean what lawyers think; I mean what the law is.

So I do have conceptual difficulties with what is proposed, quite apart from the administrative difficulties that would be caused in trying to work with it, and therefore I support without reservation what my colleagues in

Hastings county council recommend, that the wording of the current act should not be changed to accommodate the new wording.

Secondly, dealing with the question of equity, Bill 163 does not treat similar actions in the same way and to that extent they are unfair and may be quite unjust. For example, the regions of the province will be required to plan, that is, to prepare and adopt for approval an official plan. Prescribed counties will be required to do the same thing. Both will, as a result, have the same ability to direct development.

However, the similarity between them and the present scheme ends there. The regions will be delegated many of the minister's powers, such as approval of subdivisions, lower-tier amendments etc. The counties won't. This is not fair; it is not equitable. In addition, prescribed counties will be penalized if they fail to plan and they may be charged fees arising from the cost of having it done for them. Regions won't.

It is our view accordingly that to remedy this the provisions of subsections 17(2) and (3) should be amended to include those counties with official plans in regard to the approval of lower-tier plans and that subsection 51(1) be brought in with regard to approvals of plans of subdivision.

The third question I want to deal with is the question of general governance. Bill 163 proposes the establishment of what the act or the bill refers to as municipal planning authorities. I understand, because I have read some of the background legislative material, that this is being recommended in order that municipalities with a similarity of interest and desiring to make the same changes etc may pool their resources and their ideas and bring it all about more easily than can be accomplished at the moment. What will happen, however, is that many counties or many regions will be formed and they will be just another institution or type of institution added to what already exists.

In addition, where such an authority is established, the county council is prohibited from levying on those municipalities for purposes of county planning. Apart from being—perhaps "destructive" is too strong a word, but certainly "denigrate" from the powers and the position of counties, it's an undue interference, in our view, with the county's right to strike a reasonable budget. While there may be grounds for joint planning where no upper-tier planning is in place or expected, it does appear to us to be contradictory to require a county to plan and at the same time reduce its fiscal ability to do so.

For those of you who are looking at the script, it is suggested that subsection 14.1(2) be amended to prohibit municipal planning authorities as envisaged in the proposed legislation in prescribed counties or those with approved official plans, and also to delete the provisions of subsection 14.3(5) on the matter of the levy.

1440

That is all I have to present with regard to the planning side of the omnibus Bill 163. In the nature of things, we're here to criticize the provisions and not to applaud the things with which we agree. In other words, we're



here to bury Caesar and not to praise him. But those are the things that our county delegates are concerned about—really concerned about.

For the next part of the presentation, I would like to turn to the provisions of the omnibus bill dealing with disclosure of conflict of interest, and I'm going to read this pretty carefully, because I do not want it to be understood that I'm walking the gangplank alone on this.

Hastings county has reviewed all sections of Bill 163 through its planning committee and its county review committee. The review committee is a standing committee of council to deal with organization and procedure. Both of these committees have reported their recommendations to county council. The county review committee reviewed parts II and IV of the omnibus bill, Bill 163. The county does not have any concerns regarding the majority of parts II and IV, with the exception, however, of section 15 under the proposed new act to be called the Local Government Disclosure of Interest Act, 1994, which is set out as schedule B to Bill 163.

Section 15 outlines the contents of the register that the clerk of the local municipality maintains, and the contents of that register would be (a) written disclosures of pecuniary interest under section 4, (b) disclosure of financial statements and supplementary disclosure statements with regard to the prescriptions which are contained in section 6 and (c) disclosure statements of gifts and personal benefits under section 5.

Perhaps by way of a slight digression, I find that in my recent experience in this field of local government, which one normally shuns as a plague, the contractors and the engineers and the advisers and the lobbyists and all the camp followers who hang around local government establishments are now wise enough to be, as usual, away ahead of the legislation. They're not making gifts to members any more. They're making gifts to the village, and of course that's not precluded by the act at all. So you get a handsome cornucopia of VCRs and television monitors and, oh, dial clocks and digital clocks to adorn offices throughout the municipal buildings, all this sort of thing.

*Interjection.*

**Dr Leal:** And of course turn them all back, yes.

**Mr Perruzza:** Do they get charitable receipts for that and write them off?

**Dr Leal:** Who ever said that anybody in local government was a charity? In any event, this is how it's done. They're way ahead of you, a country mile. It's like the photo-radar. The ink wasn't dry on the legislation before everybody was finding ways of masking the licence plate and all those things. They didn't apply to trailers, because that's not a motor vehicle, it doesn't have a motor, and you're trying to read the licence on the back of the car and you can't see it for the trailer etc, etc. Well, you know; this is part of your life.

Anyway, let me say the county is not opposed to a disclosure of information act, but sections 3 and 4 of schedule B are of serious concern to us, because these financial statements would be considered public documents and they may be inspected by anyone at any time

by applying during business hours to the office of the clerk where the register is established, and these documents may be used for any purpose whatsoever. They're completely open. So anybody who likes to indulge in fishing expeditions, and I mean just that, to try and incommode somebody on some ground has a harvest store available to them now in the form of the register.

Because the proposed Local Government Disclosure of Interest Act, 1994, also contains a section 7 providing for the appointment of the commissioner—and we have already heard just previously what sort of a saint he has to be—we feel that if the commissioner were given the authority to review the disclosures of the members of council, as required under the act, if any complaint is received, then they can check the disclosure to see if in fact the application should be considered and sent on its way and, if not, kill it at that stage.

I want to stress, if I may, please, that we're quite serious about the open-ended and completely untrammelled use that may be made of the information which council members will have to put on file for perusal, and open perusal, for free, by anybody who wants to spend his life being a burp disturber. We don't think that's right. What it may lead to, of course, is the rather unhappy result that the only one who will be allowed, the only one who could take the chance of sitting on municipal council is someone who has no assets at all. I qualify for that and that would be fine with me, but it would affect other people I know, like my good friend the planning director.

My colleagues and I are grateful to you for the opportunity to come here and tell you what we think about some of the things, and we'd be pleased—Mr Carney would be pleased to try and answer any questions you may have.

**The Chair:** Thank you. About three minutes and a half per caucus.

**Mr Curling:** Thank you for your presentation, and though you stated that you didn't come to praise Caesar but to bury him, on the other hand, the evil that men do lives after them.

**Dr Leal:** That's right. 'Tis a pity.

**Mr Curling:** Therefore, we've got to make sure that what is done here is that our few things to be buried are the few things the evil that they do would not live after them itself.

I think your presentation was very precise and direct. It is something that we really need to go back and read again. You comment within maybe four pages of your critique of it, and I think you're right on in many respects. What you have said here has been discussed and raised in very different forms by many, many people who come before us.

One of the things that jumped out, very much so to me, is the making of the policy. As we know, these policies somehow intend to bind us more than guide us. As you know, in this hearing it is not the policy that we will discuss. It is very plainly told us here by the government. It's the legislation. It's not subject to any review.

I just want to ask you that, with some of the policies

that have been created by the municipalities, what approach do you feel you could use in order to allow the government, or those who will be changing the legislation, so the policies within municipalities can be reflected in the legislation they have here because it doesn't seem to transfer so much?

**Dr Leal:** Well, thank you very much for the perceptions which are evident in the question.

I would like to point out that in section G of the policy statements, on page 18 it says this, just in order to lend some credence to the intervention I made to suggest that the present proposal with regard to policy statements requiring action to be consistent means that they are law and not simply guidelines. Before now they were guidelines, and they were helpful guidelines and they were important guidelines, but they were not binding law, and if there was a substantial and a reasonable reason at the local level for departing from the policy statement in some degree to achieve more rational, equitable, just behaviour in the particular thing, you were able to do it. You will not now be able to do it. To show you that they said what they meant, in paragraph 3 it says:

"The Ministry of Municipal Affairs, together with other ministries and in consultation with the public"—well, I hope so—"may prepare guidelines to assist planning jurisdictions in implementing policy statements."

You have guidelines on the policy statements. You don't have guidelines on guidelines. It's very clear. They draw the distinction. Implementation guidelines are advisory and will provide information on the meaning of the policy and illustrate ways for the policies to be implemented.

1450

It's too bad, but I must say this: that after having gone through all the trauma that we did go through with the McRuer Commission report on civil rights in Ontario, and passed an omnibus bill amending Ontario's statutes to the number of 279 in order to achieve fairness of treatment and substantial justice in our legislation, we come now with this type, and it's not unique, I regret to say, but a brief 25 years later, we get back to the same old business where you have a wholesale retreat from the laws that govern, or are supposed to govern, democratic government. Why?

Oh, I know where these things come from. I know the minister quite well from having been associated with him for about 15 years. He's changed his name but he's the same man, and let me say this: He's not any more fallible than the rest of us but he is fallible, but these aren't his wild wonderments at four in the morning anyway. I can tell by looking at the American sociological jargon that appears in them that Ed Philip didn't talk that way.

**The Chair:** We'll move on. Mr Carr.

**Mr Carr:** Yes, thank you very much for an excellent presentation. Over the course of sitting on committees of the last four years I have seen bills come through where there's no changes; in spite of opposition it just goes through as is. I've seen some bills that have had so many amendments that the bill is completely different over the last little while, so I can't—

**Mr Perruzza:** Oh, here we go. We stayed away from that stuff but here we go.

**Dr Leal:** Order. I really would like to hear what he's going to say.

*Interjections.*

**Dr Leal:** I may be disappointed, but I'd like to make that decision.

**Mr Carr:** Actually, you're not going to like me because I was going to say—and I should have started and said this—I was going to ask the question specifically to Mr Carney because he hasn't had a chance to speak on it, so I've seen different things happen and we don't know what will happen with the amendments when we go through the clause by clause. Mr Carney, I wanted to ask you: The bill, as is, would you like to see it passed or defeated?

**Mr Niall Carney:** I'd like to see it defeated.

**Mr Carr:** Thank you very much.

**Mr Perruzza:** Can you illustrate one example of where you would not be able to apply local—to use your words—local equity, local justice, local righteousness in a land use decision made locally, under this act?

**Dr Leal:** Oh, sure. It happens all the time.

**Mr Perruzza:** Well, the act isn't in force yet, but name me a—

**Dr Leal:** No. The act doesn't create the problem; it just exacerbates the problem. It's going to be worse if this proposal is accepted.

**Mr Perruzza:** Give me an example.

**Dr Leal:** For example, they talk about—what's the term?—gradual development. We've had a running battle with the Ministry of Municipal Affairs now for as long as I can remember.

**Mr Carney:** Limited.

**Dr Leal:** Limited development, and not defined, sprung full-blown from the forehead of somebody somewhere, and because your views don't jell entirely with what has come from the head of Janus, then of course you're not to be believed, you're untrustworthy, you're unreasonable.

**Mr Perruzza:** Okay. You may have a running battle with someone, but one example of one piece of land somewhere in your county or in your area locally where this bill would prohibit you from using the principles you talked about?

**Dr Leal:** Oh, sure.

**Mr Perruzza:** Yes, I'm waiting.

**Dr Leal:** One of the worst at the moment that we have to deal with is the policy statement which emanated from the Ministry of Environment and Energy—and don't get me started on them—which says you can't split the service. You know what that means? If you don't know, I'll explain it to you. It means that if you're proposing a development and there's town water available but not town sewage, you can't put septic tanks in and take the town water. That's splitting the service. You must take both or neither. Why? God in heaven has not told me. She may have a reason.



**Mr Perruzza:** But how does this impact on that?

**Dr Leal:** Because it's a policy statement which becomes part of these policy statements because the Ministry of Environment is party to formulating policy statements which apparently in its mind have the force of law.

**Mr Perruzza:** How would the situation differ when Bill 163 would go into effect from the situation that you have today?

**Dr Leal:** Because if you had a situation where some policy statement precluded you from doing what you thought in the circumstances—and not because you felt that way or because you were bull-headed or any reason, but on proper grounds you felt that there was good reason to depart from the policy statement, we can now do it. Under Bill 163 if that proposal is accepted, we cannot. Is that not—

**Mr Perruzza:** No, I'm not quite convinced that that would be the case, because I believe there is sufficient flexibility, but obviously we're not going to agree.

**The Chair:** Yes, and we ran out of time. Dr Leal, we enjoyed hearing from you. We find your presentation lively and informative, and Mr Carney, I would urge you to depute separately in order that you might achieve some equity of hearing in the future.

**Mr Carney:** No. I was heard eloquently.

**Dr Leal:** We'll catch you on the next round.

**The Chair:** Very well. I'm sure we will. Thank you. Oh, there's some clarification. I'm sorry. Dr Leal, hold on one second. Some clarification?

**Mr Hayes:** Yes. I'd like to clear up the issue dealing with these policies. There seems to be a lot of misunderstanding, and whether it's intentional or not, I'm not sure. But governments do set policies, and I think we all understand that—

**Mr Perruzza:** Yes. You remember the—

**The Chair:** Hold on, hold on.

**Mr Hayes:** Excuse me, Mr Perruzza. But the fact of the matter is that, yes, the policies are there, the cabinet has approved the policies, but at the same time you hear people saying that, "We're not getting any input on all these kinds of things and we're not being listened to."

Well, there has been a task force that's set up and chaired by Dale Martin, as all members know. It's the implementation task force on the guidelines for the policies.

**Interjection:** That's different.

**Mr Hayes:** It's not different. You have your policies and then you have to have the implementation for the guidelines of your policy.

*Interjections.*

**Mr Hayes:** Excuse me. But to hear people say that there's no input, and just about every stakeholder in this province has had input in here—

**Dr Leal:** Please, please—

**Mr Hayes:** Excuse me, excuse me—

**Dr Leal:** —don't use that term, "stakeholder."

**The Chair:** Hold on, Dr Leal, hold on.

**Mr Hayes:** Okay. Many people have been represented by lots of different associations and organizations: the Ontario Home Builders' Association; AMO's got a large list on here. We have county planners. I recognize one from my part of the province in Kent county. There's another one here from Prince Edward county. There's a county planner from the University of Guelph rural planning, Friends of Foodland, and the list goes on and on. We have the Ontario Federation of Agriculture, the Christian Farmers, all of these people are having input into implementing these guidelines. So, I think that the air should be cleared. To say that there isn't proper consultation or we're just ramming these things through—

**Dr Leal:** Mr Chairman, if I may—

**Mr Hayes:** —excuse me, but it ain't right.

**The Chair:** Very briefly, Dr Leal.

**Dr Leal:** Sorry. Could I answer that?

**The Chair:** Yes, please, but briefly.

1500

**Dr Leal:** Yes, I'll be brief. You're absolutely correct in saying that governments formulate policy with their advisers.

*Interjections.*

**The Chair:** Please continue.

**Mr Hayes:** Go ahead. I'm sorry. I'm listening.

**Dr Leal:** Governments formulate policy with the advice of their advisers. That policy finds its way into legislation. If it doesn't, it doesn't affect us except in an advisory capacity. You've made my point.

**Mr Hayes:** I have? I'm glad we agree.

*Interjections.*

**The Chair:** We need to move on because we've scheduled other people. I'm sorry—

**Mr Eddy:** We really haven't cleared everything up.

**The Chair:** But Mr Eddy, please, we can't do that.

*Interjections.*

**The Chair:** Yes, but Mr Eddy, not in this forum, in this way.

*Interjections.*

**The Chair:** Mr Eddy, what I suggest is that when you have your turn, that you then can clarify the points you want to make, okay?

TOWNSHIP OF SIDNEY

**The Chair:** Town of Sidney. Please begin any time you're ready.

**Mr Carl Cannon:** I'd like to thank the Chair and the committee for the opportunity to speak to you today. My name is Carl Cannon. I am the director of planning for the township of Sidney. With me today is Jack Arthur, who is the reeve of the township of Sidney, and to the far right is Jim Pine, who is the chief administrative officer of the municipality. Following my submission we'd certainly be pleased to address any questions that arise as a result of this presentation.

We're here today to speak on behalf of council and the approximately 17,000 residents of Sidney township

concerning the proposed planning reforms of Bill 163 and their effects regarding the potential planning roles and responsibilities of counties and municipalities like Sidney. We will also touch upon the proposed municipal planning authorities.

Over a long process that's led to this bill, Sidney township has participated very directly in the process. Certainly we submitted submissions to the Sewell commission. We thank the minister for the opportunity for sitting down with Sidney township and a number of other similar municipalities to hear us speak with regard to concerns such as the potential for municipal planning authorities and the issues with respect to upper-tier planning. In essence we've taken any avenues available to us to submit something or make a presentation or make a paper of some kind.

Before we outline our supports or concerns regarding the particular bill, we think it's necessary to give you some background or backdrop of Sidney township. In your blue package that you've got before you, you'll see in the back a map which shows Hastings county. Sidney township is within Hastings county. Sidney township is adjacent to the Bay of Quinte. It has the city of Belleville, 37,000, to the east of us. It has the city of Trenton on the west, approximately 17,000. The city has the same population as Sidney township.

Again, we are a municipality of 17,000 people. In essence we are stuck—and that's the opinion of the municipality—in an antiquated county system in which we have little ability to influence the decisions of council. While we have 28% of the population of that county, we pay over 29% of the bills of the county—that is the county levy; we pay approximately 39% of the county road budget. Our representation at county council, however, is only 10%. As few as four municipalities with 2% of the population carry as many votes as Sidney does in Hastings county.

Second, the county consists of 27 municipalities that stretch from the Bay of Quinte north to Algonquin park, a distance of approximately 140 kilometres. The length and breadth of the county has ensured that our community of interest in day-to-day affairs lies with our sister communities in the greater Quinte area. Our relationships—business, commercial, residential, service-wise—are all within the greater Quinte area. We must ensure that this growing interrelationship is not adversely affected. The greater Quinte area represents Sidney's best hopes, and indeed those of other member municipalities in the greater Quinte area, for improving our economic and social environments.

We have, as a group of municipalities sharing common interests, taken some important steps together. For instance, many of us have joined together to establish the first-ever Quinte area economic development commission, whose task is to improve our local economies.

We are also members of the greater Quinte area advisory committee. The reeve of Sidney township is the chair of that committee, which consists of the heads of councils and the senior administrators of the member municipalities. This advisory committee is a sounding-board for many area-wide issues, from taxi regulation and

bicycle paths to infrastructure servicing issues. The committee has functioned for well over three years, and we do acknowledge the great assistance of the Ministry of Municipal Affairs in that commission.

In short, our day-to-day affairs are more closely tied with the other municipalities adjacent to our boundaries than with those of the county.

A very significant portion of our daily issues involve planning matters. It is also very important to note that the township has a lengthy tradition and experience in planning matters. We have since 1980 had our own official plan, which was recently updated and revised in 1993. Our long-range and day-to-day planning issues are managed by—I'm making this comment—a professionally accredited team of employees.

The county official plan does not affect Sidney township. It does not cover it and never has. Sidney township believes it has a mature planning culture, to use a very common terminology as of late. We believe our long-term directions and planning objectives are generally different than those expressed or contained within the county's official plan. For example, our policies are more restrictive regarding rural development, using severance as an example, and we're more direct in ensuring that growth occurs within identified urban service areas.

Our new official plan and secondary plans reflect a commitment to ensuring that provincial objectives such as the protection of environmentally sensitive areas and significant natural resources is achieved.

Having made this backdrop, I'd like to make some specific references to Bill 163.

Again, our community of interest is with our sister municipalities, neighbouring municipalities, in the greater Quinte area. Because of this situation, we strongly urge you to support section 8 of the bill, which proposes a new planning mechanism called municipal planning authorities. The establishment of these authorities was a direct response from the minister to situations like ours in Sidney township.

Many municipalities like Sidney—the townships of Ernestown, Kingston, Pittsburg and Elizabethtown—find themselves locked into a county system of government with the same limitations that we have, especially with respect to representation. Those municipalities I mentioned you will find are all the most urbanized, the most populated municipalities of their counties. Sidney's situation is not uncommon.

Municipal planning authorities we believe are essential. They reflect the realities of planning in communities of interest, specifically in our case the greater Quinte area, but it could be the greater Kingston area. There are a number of areas. We need this forum to work collectively as a group of municipalities which transcends traditional county boundaries to solve common problems of growth and related issues of planning, servicing and economic development.

Certainly the bill as drafted recognizes this necessity for a truly region-wide approach to planning that is equitable and based on logical relationships among municipalities.



Again, we urge you to recommend to the minister and to the government to retain the municipal planning authorities as envisioned in the bill. To do otherwise will only serve to perpetuate and indeed exacerbate the inequities of an unaccountable and artificial planning structure currently in use, being county planning. Unless this committee is prepared to recommend radical restructuring of county government to more closely reflect representation by population, municipal planning authorities will provide us with an opportunity to properly plan within a structure that makes sense. It's the only opportunity for Sidney as envisioned under Bill 163.

Similar to this and related, in turning to other parts of the bill, we'd like to discuss some sections, specifically section 10 of the bill which requires all counties to have official plans. We agree that this is a reasonable suggestion. A municipality like ours, with its own official plan and tradition of planning, should not, however, in the case of Hastings county, conform to a plan that we believe is inferior. It would be the perception and the view of Sidney township's council that this is a step backwards.

#### 1510

There's no disagreement. The comment made by Prince Edward county, the comments through Hastings county, is that planning is truly a process that people learn from. It improves through time. I don't know if I want to make an equivalency to a wine or something, but it's not something that can be superimposed, pushed down, forced upon people. It does grow. In Sidney township it's the belief of our council, and I think if you even talk to your own ministry staff people there would be some reflection of our opinion, that it has achieved a good status within Sidney township. It's a responsible planning process. It's reflective of the needs and the wishes of the voters of Sidney township.

The other issue, one that's not addressed within the bill, is the existing provisions under the act that require lower-tier plans like Sidney's to conform to a county official plan, as well as to pay a county levy for planning operations. Again, Sidney township is not in the county official plan and the only county service that we use is the land division committee. We use it because the county won't delegate it to Sidney township, so we really don't have an option there. We have to use that system. Sidney is required each year to contribute \$54,000 to the county planning process. That's pretty expensive land division, but that's what we get.

The major comment you've heard with respect to municipal planning authorities from counties has been that they're concerned about the loss of revenue as a result of certain municipalities turning towards more logical relationships. Their concern is they are going to lose the money. I think the reality is that a number of municipalities presently in the county are getting their planning subsidized by municipalities such as Sidney township, Ameliasburgh and other larger urbanizing townships within counties. Maybe the reality is that those municipalities should be paying their fair share of county planning, and that through the municipal planning process, Sidney township will have the opportunity to pursue

what is best for it and its neighbouring municipalities and create a true regional planning approach. Those other municipalities in the county will have to pay what they should be paying for their planning service, not a subsidized service.

In summary I'd like to briefly restate from our submission that Sidney finds itself as a member of a county where despite its substantial share of the annual budget of the county and of the county population, it carries very little voting power. This lack of influence will greatly affect our ability to plan with our neighbours in the greater Quinte area if no municipal planning authority is available. We cannot be forced to be force-fitted into a county planning structure which will not respond to our needs and the growing interrelationships with greater Quinte area municipalities.

Practically speaking, our community of interest rests with the municipalities in the greater Quinte area more than it rests with the northern townships of Hastings county. The difficulty the county continually faces in the current structure is balancing our needs with the diverse interests of municipalities beyond the greater Quinte area. The bill's provision of municipal planning authorities will allow the county to work with those municipalities that require the county's assistance and will allow Sidney to work with its own community of interest.

Just on top of the comments that you'll find in your sheets, there is some further detail within the document you have. There are some population figures identifying significantly populated townships within counties, as well as some information on municipalities in the greater Quinte area.

I just want to touch upon a comment that the committee has probably heard frequently. I don't think they should be surprised that counties are not supportive of the policies proposed for municipal planning authorities. On the issue with respect to the difference in the potential delegation authorities, the regions versus counties, I think it's very important to realize, and I know you realize, that the province has in the past made many attempts, has provided many initiatives for counties to revise themselves to something that is representative and relevant in 1990, and hopefully relevant in the foreseeable future.

Regional governments are relatively new creatures. They are generally representative and they have been granted authorities reflective of their maturity. I think this is an issue that has come up a number of times, but counties and regions are truly different, and I think we certainly should reflect that. And all counties are not the same, as all municipalities in the county are not the same.

I guess the Sidney perspective is that the flexibility as envisioned in Bill 163 should remain in the document. The minister should have the discretion to recognize that everything is not the same, that there are exceptions to the rules, and that there should be an opportunity to do what is best.

I'll close my comments, and the reeve will likely like to add to that.

**Mr Jack Arthur:** Mr Chairman, ladies and gentlemen, I guess, unlike some of the people I heard someone

comment about, we're here to thank you for hearing us before and including concerns that we had into the legislation. The fact is that we're keenly interested and very pleased that the municipal planning authority concept is being considered. It is very important, particularly in the greater Quinte area.

You heard from Mr Bonter, the reeve of Ameliasburgh. He is part of that greater Quinte area. We're working now together on an advisory committee. With the assistance of Municipal Affairs, Mr Paul Ross, I think we've achieved a great deal. But we need the ability to plan together. We're spending literally hundreds of millions of dollars in infrastructure that we need to be able to share, and we need to start to develop the Quinte area as a region or as an area together.

Certainly our taxpayers come to me as the reeve and say, "Why can't you get together working with Belleville and Trenton?" because to the taxpayer, the boundaries are transparent. It's only the elected people who seem to have to be able to define where the boundaries are. There are obvious reasons for that, but for people who are working in the Quinte area, they need to have a group of politicians who can work together, who can work across boundaries. In this case we're talking working with three county areas: Northumberland, Prince Edward and Hastings. This is very, very important.

Our neighbour to the west of us is in Northumberland, Murray township, but there are certainly services and opportunities that we can deal with together with them if we had the opportunity to have municipal planning authorities. This is critical to our ability to grow and prosper in the Quinte area. It simply means that we can do it logically and be competitive with other areas that have those opportunities. Some of them are regions, some of them have other arrangements, but certainly we need this opportunity.

The county situation, the county planning, is a situation that has served its purpose, but certainly our focuses of interest are not the same. As we identify here, when we have the distances between north and south Hastings county, it is very obvious that it is very difficult for someone in north Hastings to make a decision when it is very dependent on information related to Sidney township. It's just not that reasonable to have that. However, our neighbours of Belleville, Trenton, Ameliasburgh, Murray township, Frankford, those people we have immediate relations with; we have infrastructure interaction. We have every reason to be in the planning business with them. Ladies and gentlemen, we are simply asking you to help us to do this. We're pleased that you've heard us. Just stay with us now and support the concept of the municipal planning authority. Thank you very much.

1520

**The Chair:** Thank you. Mr Carr, there are about three minutes—a bit less than that.

**Mr Carr:** Thank you very much. On page 4, you sum it up. In the back you talk about some of the things you'd like to see, but on page 4 you basically sum it up, and I think I can read into it that you would like the bill passed. So what you're saying is you'd like the bill passed, but it would be better if they implemented the

recommendations that were part of the resolutions on pages 5, 6 and 7 that are fairly detailed.

**Mr Arthur:** That's right.

**Mr Carr:** I think that's helpful, because if you look at the recommendations and summaries and comments, they're done very well. I think the government and the staff will be able to take a look at that. So it is laid out very clearly and I want to thank you for that. It's very well done on page 5 on. Good luck.

**The Chair:** Mr Wiseman.

**Mr Wiseman:** I defer to Mr Wilson.

**Mr Gary Wilson (Kingston and The Islands):** Thank you very much for your presentation. I think you can be justifiably proud of your planning department.

**Interjection:** We are.

**Mr Gary Wilson:** It has come up with such a good document that it really does underline what is at stake here, and since I'm from Kingston and the Islands, it is of course an area that you do mention as being in a similar position to Sidney and surrounding townships.

I was struck by your comment, Reeve Arthur, when you say something to the effect that, "We have every reason to be in the planning business with these other jurisdictions." I think that again applies to several other areas. I am just wondering what you see in the future for these areas as far as overcoming some of the—I would assume there are some anyway—doubts or hesitations about working closer together because of the loss of independence or autonomy that the various constituents, the various townships, have now in your area. How do you foresee overcoming those kinds of barriers?

**Mr Arthur:** Certainly this is always a concern when there is a change and you're trying to get a balance, but I think the most important thing is that people are aware that the ability of money for hard services and things like this—that they simply are not as available as they were. We're going to have to share more; we're going to have to resort to working together. We're working smarter, not harder.

Our main concern with something like this is that we don't develop another level of bureaucracy. I think each one of the member municipalities that we're talking about has strong planning abilities, and simply what we need is an organization that brings us together and maybe one limited level of administration that provides us with the opportunity to work together.

I think we've shown in the past that we've been able to work together on the topics we've referred to here. We simply have to move forward, because this is the way of the future.

**Interjection.**

**Mr Wiseman:** I can't do it in a minute.

**Mr Eddy:** Thank you for your brief, because it's quite different from certainly what we've been hearing. I don't understand why you can't work together now and plan. Do you have a municipal liaison committee of the three municipalities, Trenton, Belleville and the township at the present time, and work together and plan together? Do you share services?



**Mr Arthur:** Oh, yes. We're doing all of those things right now. The greater Quinte planning advisory committee is an opportunity for the heads of council and the administration to come together to discuss topics. What we're trying to do is bring it closer together. This would be sort of phase 2.

**Mr Eddy:** But rather than discuss topics, do you take recommendations back to the three councils that are implemented?

**Mr Arthur:** Oh, yes, definitely.

**Mr Eddy:** And you are working together, so you share services. Do you see, by having a municipal planning authority, that you would have an official plan of the municipalities of your township, Belleville and Trenton and whoever else may go in? Do you know the difficulty of getting that through, changes, and getting that through a multiplicity of independent councils? That's one of the things that I see.

**Mr Arthur:** Could I just comment? I guess my point is that in the county system there are situations where we simply don't have control; we really don't have the input that we should have.

**Mr Eddy:** In what, though? In what service?

**Mr Arthur:** In planning or in any—basically, on county council level, we do not have the representation. The situation is that it's not by pop, the representation. The fact is that if we can come together as equal and concerned neighbouring municipalities—

**Mr Eddy:** But you won't be equal. In a municipal planning authority, you can't be equal, because you're 17,000. The city of Belleville is what? Some 37,000, 45,000?

**Mr Arthur:** About 37,000.

**Mr Eddy:** And the city of Trenton is smaller. So you're not going to be equal.

**Mr Arthur:** However, it would be better than having 27 municipalities where significantly the numbers are imbalanced.

**Mr Eddy:** I have to point out also that the Hastings county plan is a policy plan rather than a land use plan, is it not? Am I wrong on that?

**Mr Cannon:** It is a land use plan and a policy plan. But the issue the reeve is identifying is that his council will not have the opportunity to say how this municipality, in conjunction with area municipalities, will utilize the millions of dollars that we have in water plants and sewer plants and all that.

**Mr Eddy:** But you have the opportunity do to that. Whether it's listened to, of course, is a different thing.

**Mr Cannon:** I think that's the major problem.

**Mr Eddy:** That's what I wanted to get to.

**The Chair:** Mr Eddy, sorry, we've run out of time, but I think you wanted to comment.

**Mr James Pine:** All I wanted to say was that as we understand the bill, if there's no municipal planning authority there, the interrelationships on a formal level are going to be handled at the upper tier, at the county level. What we're saying is that doesn't make sense.

We're talking about a community of interests in the greater Quinte area, that we're already working on a whole number of issues, and planning obviously is very important to make all of those things come together. We think the municipal planning authorities have great merit for recognizing areas like our own, Kingston, the Kingston area. It just makes sense. It's logical, the relationships, and we're going to get better bang for our planning buck when we work together that way.

**The Chair:** We ran out of time. We thank all of you for coming and sharing your suggestions.

#### COUNTY OF LENNOX AND ADDINGTON

**The Chair:** We invite the county of Lennox and Addington, Mr Jim Sovia. Welcome.

**Mr Jim Sovia:** Good afternoon. I'm presenting a brief on behalf of the county of Lennox and Addington. I'm the county planner for the county of Lennox and Addington. Unfortunately, our reeve couldn't make it. This is the day of the warden's banquet and he's a little tied up otherwise.

The opinions expressed in this brief represent the position of the county of Lennox and Addington council in responding to the Planning Act amendments contained in Bill 163. The county commends the committee for taking time from their busy schedule to bring their hearings to various parts of the province outside Toronto. It's good to see a little bit of Queen's Park down closer to your doorstep. Certainly a very important part of the Sewell committee's work was getting around the province. It's nice to see this committee follow through on that and take the hearings out to the areas outside Toronto.

The county has significant concerns about the impact of Bill 163. We have a concern with the change from "have regard for" to "be consistent with," we have a concern about the impact of municipal planning authorities, and we have a general concern, a sense that local governments are not being given the scope to plan locally and fulfil the local vision of where they want to go.

The test of how provincial policy will be dealt with—"have regard for" versus "be consistent with"—has to be related to the detail of the provincial policy. The position taken by the Sewell commission was that "be consistent with" should apply to policy that would, quoting from the Sewell commission's final report, "focus on direction and results rather than on the detail of how implementation will occur or the means to be employed." The recommendation to change "to be consistent with" was something that came from the Sewell commission but it came along with a different set of policies than we're looking at now. The Sewell commission worded their policies relating to a test of "be consistent with" as opposed to relating to a test of "have regard for."

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Their concern was that "have regard for" was too loose, but if it was applied to the existing policies it would be too stringent, and they were walking a tightrope through there. They felt in their recommendation that the test should be consistent with but the policy shouldn't be laid out in such detail that it was impossible to have any local flexibility in applying those policies. The policies

proposed in the Sewell commission were much less detailed than the existing provincial policies.

Bill 163 will change the requirement "to be consistent with" without any significant changes to the detail of the existing policy statements. In other words, the same policies will be implemented with a bigger stick. You can read through existing land use policies that are in place now and the new comprehensive set of policies, and in some cases they're virtually word for word. So what the legislation gives is a much tougher level of compliance to the same policies we've had now. There hasn't been an outcry that the existing policies aren't strong enough. That certainly hasn't been my experience in this area, but the test we have to meet now has become more stringent.

Our second area of concern is the impact of municipal planning authorities. The county is concerned about the impact of municipal planning authorities. Creation of a new, special-purpose upper tier will only serve to further confuse an electorate that's already confused about the lines of accountability at the municipal level. There's confusion and we run into it every day as to who controls what and who did I put in control—who did I elect to a position that's controlling that. If they're dealing with planning, they look first to the local level, then they would look to the county level. They'll now have to look to a different level altogether, people who were appointed through a process that isn't clearly laid out in this legislation, and representation isn't clearly laid out in this legislation.

The creation of municipal planning authorities is restructuring counties by the back door in a very piecemeal fashion. If this opt-out provision goes ahead, what will be next, museums, seniors homes? There are certainly issues surrounding county government that need to be addressed. Some of these solutions will likely involve changing municipal boundaries. However, these changes should only be part of an overall look at county government, not a legislative provision that can be enacted by the local municipality and the minister with no input from the county.

The impetus for the creation of municipal planning authority is the local municipalities involved. They petition to the minister without any criteria laid out in the legislation as to how they'll be created or in what circumstance they'll be created, and the minister issues an answer as to whether that will be created or not. The counties involved may or may not be aware of the creation, have no input unless they're specifically asked about the creation of municipal planning authority.

Our general comment about the local control of planning—certainly you've heard comments before—the comments from the last group that was before this committee in Sidney township that the planning process is an evolutionary process, an educational process at the local level. The local municipality worked through it. They see the need for higher and higher levels of control or different levels of control, and they evolve into those. I've certainly experienced the same thing in my work as a municipal planner. There's always a difficulty in starting a new official plan with the municipality in explaining that: "I'm sorry, you don't have a lot of local control. There's

a number of provincial policies that have to be met," and that's a generally accepted principle. That's not a difficulty, except when you get into the level of that provincial control.

In some cases we're dealing with municipalities that may have very few decisions left to make once the new comprehensive provincial policy statements are consistent with the policies they want to put in place. Once those are listed and covered, you may not have a lot of options and certainly my experience is that in rural areas—and that's a majority of what this county covers—the decisions are very limited.

The tone of the legislation, when combined with the recently approved provincial planning policy statements, leaves one with the general impression that the province does not trust the municipal planning process in general, and the county structure in particular.

The new policies combined with the requirement to be consistent with them give very little scope for local planning in rural areas. Once aggregate, agricultural and environmental policy requirements are met, a significant portion of most municipalities is removed from development. Adding the significant barriers to development on other than full municipal services, many rural municipalities have virtually no control over local planning. The provincial vision for the future of the municipality may not agree with the local vision but the provincial vision wins out.

The legislation does not even provide any carrots of down delegation of approval authorities to promote county planning.

Worthwhile local planning will only take place when the local elected officials can see that they have some scope to direct the development in their areas in accordance with local wishes. It does not appear that Bill 163 and the associated provincial planning policies will provide that scope. Thank you.

**The Acting Chair (Ms Christel Haeck):** Thank you, Mr Sova. Seven minutes each.

**Mr Wiseman:** Thank you for your presentation. As I was listening to you I've designated myself the person to discuss the "be consistent with." The reason I have is because I think what we're seeing here in the entire hearing process is a philosophical debate between groups who believe that we need to be moving more strongly towards an ecosystems planning approach, where sustainability of the environment and the communities are the main concern. On the other hand, we're seeing a group of people who believe in absolute property rights: "I own it. I can do what I want with it."

What we're seeing as a substratum to that is that community groups, ratepayers' associations, environmentalists and individuals are coming before the committee and are either saying: "Thank you for 'shall be consistent with'" or "it's not strong enough. It should be 'shall be consistent with and conform to'" or optimally, "it should be 'will conform to.'"

Then what we're seeing on the other hand are planners, councillors and developers coming before this committee and saying: "Oh, no, everything's fine. Leave 'will have



regard for.” The argument is breaking down between planners, councillors and developers who say there’s something wrong with the planning system, but when they say something is wrong with the planning system they’re saying, “It’s because we can’t go fast enough to do whatever we want.”

When we hear from community groups, activists, individuals and environmentalists, we’re hearing: “My gosh, they get whatever they want. The official plans don’t really mean anything. They’re not worth the paper they’re written on,” and that rezoning takes place and it doesn’t even have to make any sense within their own official plans, let alone any policy statements of the government, because zonings are being changed from industrial-commercial to residential all across the province.

People move into a neighbourhood, we hear from community activists, and the land they thought they knew was zoned in a way, overnight, so to speak, is being changed by councils. What we’re hearing as a committee is: “You have to get rid of the maybes in the Planning Act and you have to replace them with firm statements saying this is what you can do and this is what you cannot do.” Developers in my own riding have said: “Fine, that’s great. Tell us what we can do; tell us what we can’t do. If we can’t do something on this piece of land, we won’t buy it, but make sure you get rid of the maybe. Make sure that when I buy that piece of land I can go ahead and do it in the shortest amount of time possible and that my neighbour isn’t going to be able to do something else with his land even though it’s zoned the same.”

What we’re seeing here is this constant battle between these two philosophies. My own opinion is that the Planning Act needs to be extremely detailed and very, very clear so that the checks and the balances in the system will work. The view from individuals, ratepayers and community activists is that it does not work for them. It works for the developers and the councils are caught in the middle. In some cases, councils are caught in the middle to the extent that even if they don’t want it, the Ontario Municipal Board will impose it on the town anyway. I think what we need to have is a very clear Planning Act that empowers all three groups of people to be able to work within it and get rid of the ambiguities. That is why I support at least moving to “shall be consistent with,” and away from “having regard to.”

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**Mr Sova:** My concern and my experience in the rural area is probably fairly significantly different than the urban areas in that we’re not typically dealing with the large-scale developer, it’s the person who owns a farm and wants to sever a lot for the son, or who owns a 50-acre parcel and they want to divide it in half to sell the other half—very small-scale developers.

We’re also dealing with the situation where we’re much more heavily impacted by provincial policy statements than urban areas in that if we’re dealing with a standard township in this county, a third to a half to maybe more would be covered by an agricultural designation that’s very restrictive and essentially ties the hands of the local municipality as to what they can do there.

Really, their only decision is whether or not they grant retirement lots. The list of permitted uses is laid out in the legislation; the types of severances—and they’re very limited—are laid out in legislation, so we have very few decisions to be made on that. In some cases in some municipalities that may cover 85% or 90% of the municipality.

In this county, a significant portion of a number of townships are covered by aggregate designations. The aggregate designation—and that’s certainly been a very frustrating part for a lot of local politicians in dealing with official plans where the Ministry of Natural Resources comes in with a fairly heavy hand to say, “We want a rather large area designated for future quarrying use.” This county tends to have a limestone bedrock very close to the surface and can be a valuable aggregate resource, but there’s no relation between the aggregate resource and where it will be used and when it will be used. Certainly there’s vastly more than is needed in the local or regional area.

There’s some indication that there’s not even being projections done province wide to say we’re not projecting how much we need over the next 50 years, we just want to protect as much as we can. That is, in fact, the legislation—the policy says that aggregate lands should be protected as much as reasonably possible, realistically possible. Once the agricultural land and the aggregate land have been covered, then the aggregate policies are essentially to say that nothing that could preclude development of that property for aggregate will be allowed. That essentially sterilizes; residential development of any form couldn’t be permitted on that land.

When you take those two groups out and then include the environmental areas, if there are any water areas, waterfront areas, environmentally sensitive areas of a range, those are excluded as well. The proportion of the municipality that the local municipality is left with to make decisions about may be very small. Under the policies, if that municipality doesn’t have any publicly serviced water and sewer in urban areas, it may not have the option of allowing extensions to those urban areas. So they may be faced with a situation that, once they’ve met all the provincial “be consistent withs,” they don’t even have the option of rezoning industrial land or agricultural land or anything. That’s controlled by provincial policy as opposed to an urban area where there’s more flexibility. They’re certainly not to be covered by the agricultural and aggregate designations to the extent that a lot of rural areas are.

**Mr Wiseman:** I have another question but, oh, time is up.

**The Acting Chair:** No, it very clearly is and I’m sorry, but time does tend to fly by.

**Mr Eddy:** I should give up some of my time, of course, but I don’t think I will in this case. Thanks for coming up.

I’m very interested in Mr Wiseman’s statements—take the maybes out of the planning process. Who put more maybes in than his party? How about legalizing basement apartments and forcing municipalities across the province to recognize them? I just saw where the Minister of

Agriculture, Food and Rural Affairs has said we've got to help farmers get into business and be into more than the farming business, and we're going to facilitate that. I took it to mean we're going to maybe change the planning rules and—I'm not saying against it—facilitate on farm industries, which there is in many places anyway.

I don't think you can ever take the maybes out of planning, because it's a changing process and there are always proposals coming along. Maybe some of us have been part of them.

I appreciate your pointing out the difference between urban and rural Ontario. That's primary in this planning process and should and must be recognized, so thank you.

Coming to the "be consistent with" wording—a lot of controversy. I really thank you for giving us the explanation, pointing out what Sewell said and why he said it compared with what's been done. It's a change from "with regard to" to "be consistent with," and the government said it might have been "to conform with" and some are saying "to conform to."

However, we've had another proposal, and I'd like your comments on it, saying, "shall maintain the principle and intent of provincial policies." That's the wording. Would you like to elaborate on that?

**Mr Sova:** That's certainly more within—our local plans will rarely disagree with the intent and the thrust of the policies. For example, the policy to protect aggregate areas is not something that most local municipalities have a problem with. Their concern is the extent of protection that's provided. They don't have a problem with protecting existing quarrying operations or pit operations and allowing for expansion. Their concern is becoming a quarry for the rest of Ontario.

Certainly a local municipality will maintain the intent of agricultural designations in most cases, in virtually all cases. There isn't a problem there, the problem is with the last hundred acres that are being discussed. The province has a large stick in "be consistent with" and have identified that as an agricultural area; they don't have the option to say, "But in this case, we want to allow for growth to this developed area." Those sorts of local flexibility are not built in with that bigger stick.

**Mr Eddy:** So especially for rural Ontario, it would be much better, realizing there's going to be a change. "Have regard to" is considered too weak by most people and it's going to change, but you would agree with the proposal I think.

**Mr Curling:** One needs some comment from you in this respect, and again I know that this omnibus bill is a way of sort of putting everything into it and asking you, in half an hour, to make a presentation, have some interaction, and we call it public hearings and public inputs. But you're not given enough time to exercise and to examine the legislation. Forget about the regulations, they don't count, although most of it—the meat of all of this is supposed to be in the regulations.

*Interjections.*

**Mr Curling:** You see, if you rattle the cages, how quickly they respond. One other thing I'd like you to

comment on, if you had an opportunity to look at minor variances and what impact it had and how you see this definition of minor variance. Should there be a definition to it and should that be in the legislation or should that be in the regulations? Furthermore, it's not in the legislation now, anyhow. Could you comment on that?

**Mr Sova:** It's certainly difficult to define—very difficult to define. It's a problem I've had dealing with all along. I found that in a lot of cases, the local elected people or the local appointed people have a reasonable handle on what is minor and has a minor effect on the area.

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My one concern with not permitting the appeals to the Ontario Municipal Board any more is that some councils, certainly not all, can be very blunt in making a decision and may not allow for the input.

On the other hand, it's been my experience that when a group is the final decision-making body, they consider the matter much more than when there is an appeal to their decision and the person is simply sitting waiting for your decision so he or she can appeal it anyway.

I faced a situation where a matter before a board to do with a minor variance, where there was quite a discussion on both sides of the matter—they more or less threw up their hands and said: "It'll be appealed anyway. Let the municipal board make the decision."

If the appeal weren't there, there would be much more consideration of the matter in front of them. That's been my experience: When they're the final arbiter in a situation, they consider it much better, and certainly my experience of the board is that it can be rather variable over time anyway.

**Mr Carr:** Thank you for your presentation. I take it from the criticisms you've outlined that you'd like to see this bill defeated?

**Mr Sova:** Certainly the negatives outweigh the positives.

**Mr Carr:** As you know, we get to present amendments through clause-by-clause, but as it stands now you'd want it defeated. Having said that, and recognizing that the great socialist experiment in the province of Ontario is rapidly coming to a close, what would you suggest the next government do?

**Mr Paul Johnson:** That's just your opinion, Gary.

**Mr Carr:** I still can't find anybody who wants to bet any money that they'll win, although the other side is quick to deny that.

What would you suggest the next government do? You're so concerned about this. I'm looking for a broad statement. Where do we go from here, as you don't like this?

**Mr Sova:** The broad statement of policy as a part of this—certainly it's not before the committee now—establishes a provincial policy on a range of items that didn't have written provincial policies up to this point. My concern is changing the test so that we have to be consistent with this new set of policies, but it's certainly refreshing to see the provincial policies laid out in one



place rather than having to deal with comments that come back from the various ministries saying, "This is what we think now." Having them down is having the set of rules out in one place. We're concerned about how we have to meet that set of rules, but certainly having the rules in one place is an advantage.

The other concern, and it's a concern I've raised with respect to municipal planning authorities, is that there's a broader issue of county government and county government restructuring that has to be dealt with, and shouldn't be dealt with simply in the narrow range of planning matters but should be dealt with in a broader way. The issues of planning could be dealt with through this, but the issues of infrastructure spending are not dealt with there. It's still at the local municipality. You've got a lot of things that don't tie together and you've got separate bodies dealing with a lot of things that should be brought together. Certainly the issue of county government and county government restructuring is important.

**Mr Carr:** Some of the concerns you've outlined—I've sat on other committees this summer, and the same principle applies. They like some of the broad overview and the direction, but it's when you get down to the details that some of the concerns come about.

But I want to ask you this. Knowing that this government will not be around after the next election, can you see the legislation working if, through the regulations, you get what you're asking for? As we go across this province we're hearing time and time again, "Just give us the rules, the definitions." We're hearing that from you here, we've heard it about the timber bill. Can this bill work if you get some of the clarifications and if the government, of whatever political stripe the next one will be, says this is what's going to happen? Can you then live with this bill?

**Mr Sovo:** The biggest concern I still have is the "be consistent with." That's used at the bureaucratic level sometimes as a very large stick, and will be used before the municipal board in the same fashion. They've been given different wording than they had before, and the idea is: "We've got to clamp down more. Clearly the wording is more restrictive than what we had before. We've got to clamp down more and we've got to listen to whatever the province tells us more than we did before." That's my biggest concern.

**Mr Carr:** Thank you. That's very helpful. Good luck.

**The Acting Chair:** I want to thank you, but I will not dismiss you yet. Mr Hayes would like to add a few points of clarification for you and, obviously, all of us.

**Mr Hayes:** Before I ask the staff to make a clarification, I'd just like to point out that obviously Mr Carr hasn't learned from what's happened to previous Tory governments in this province and this country for their arrogance.

*Interjection.*

**Mr Hayes:** Ladies and gentlemen, the reason this committee is here is to deal with the Planning Act and deal with open local government and not to come and play politics in your backyard. I don't think you want to hear that.

I would like to ask the staff to make a couple of clarifications.

**Ms Dewar:** I'm Diana Dewar from the Ministry of Municipal Affairs. You asked a couple of questions and asked for some clarification about whether the viability of the remaining municipalities would be a consideration in the creation of a municipal planning authority. The creation of a municipal planning authority would require the minister's approval, and that certainly would be a consideration in any approval of a municipal planning authority.

You've asked if they would be prescribed to prepare an official plan. That would depend on the individual county. They could be or they may not be, but it would depend on the individual circumstances.

The third point I'd like to clarify is your second-last paragraph where you say that the legislation does not provide any carrots of down-delegation of approval powers to promote county planning. I'd like to point out that the existing legislation, and this is carried through in Bill 163, would allow delegation of minister's approval authority to counties.

**The Acting Chair:** I hope that clarifies some of your points, and I do appreciate your comments. You did add some very good points and I'm quite sure everyone is very interested in what you had to say. Thank you, Mr Sovo.

#### PRINCE EDWARD COUNTY FEDERATION OF AGRICULTURE

**The Acting Chair:** I now call the Prince Edward County branch of the Ontario Federation of Agriculture.

**Mr Keith Matthie:** Did everybody leave?

*Interjections.*

**The Acting Chair:** Excuse me. If you gentlemen would please introduce yourselves for the purposes of Hansard, then please begin.

**Mr Curling:** Madam Chair, may I make a point? If the government members would be here—

**The Acting Chair:** Mr Curling, there are definitely government members in the room, and we usually try to avoid making those remarks. Would you allow the deputants to have their full time? I would like to turn to the deputation again, shenanigans aside. Please, gentlemen, continue.

**Mr Matthie:** It sounds like the Legislature, doesn't it?

**The Acting Chair:** It is somewhat like that at times. My apologies.

**Mr Matthie:** Everybody seems to know Jim Taylor, so I don't need to introduce him. Also here is McCrae Danforth, second vice-president of Prince Edward County Federation of Agriculture, and I'm Keith Matthie, the president. We're pleased to be here this afternoon to present our views on these issues.

We haven't been able to cover them all in our presentation, but there are points my two colleagues wish to make. Mr Taylor has comments, and Mr Danforth too. And Paul Johnson, we acknowledge your presence; thank you very much for being here. I'll read the statement we have prepared, which is really a brief outline of some of

the problems. There are many more, but we won't have much time to deal with them in the half-hour.

We welcome the opportunity to appear before this committee as part of your tour of Ontario to hear the views of organizations and others on the subject of the implications of Bill 163, to revise the Ontario Planning and Development Act and other acts.

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Our federation is a branch of the Ontario Federation of Agriculture, which made a submission to you earlier this week. Our branch has 350 members, mostly farmers, who own or rent land in Prince Edward county. We are in the process of having a revised official plan now before the Ministry of Municipal Affairs for approval, but several objections have been raised by ourselves and others, including the Ontario Ministry of Agriculture, Food and Rural Affairs, and another public meeting must be held before the ministry will approve the plan even though county council has officially passed it.

Our objection to the official plan is the same as we have to the new acts and the various policy statements through which municipalities must have plans "consistent with" the Planning Act. That is, farmers have basically lost their rights to develop their land. This is confiscation without compensation. Farmers recognize that classes 1, 2 and 3 land must be preserved as much as possible for future food production. However, loss of development rights should not be borne by the farmer. If it is in the public interest to retain nearly all good land as farm land and the owner is expected to be a good custodian of the land and maintain it in an environmentally acceptable manner, compensation in the form of the purchase of development rights should take place.

In 1992 the Ministry of Agriculture and Food, as it was known at that time, conducted public hearings across Ontario to discuss the range of options for acting to protect agricultural land and examined various means of compensating farmers. This was recognition that compensation would be necessary to preserve much of the good land under the existing conditions. However, the options available have been ignored, and the present policy statement of land use and the wetland policy statement both take away farmers' rights.

The Ontario Federation of Agriculture, with its 38,000 members, supports this request.

Two different definitions of "agricultural activities" are being used. In the most recent document, Comprehensive Set of Policy Statements, the definition is as follows:

"Agricultural activities' means plowing, seeding, harvesting, grazing, animal husbandry, buildings and structures associated with these farming activities. This includes such activities on areas lying fallow as part of a conventional rotation cycle."

In the consultation paper of December 1993, A New Approach to Land Use Planning, the definition is: "'Agricultural use' means primary agricultural uses, secondary agricultural uses, and agriculture-related uses. Primary agricultural uses are the growing of crops or raising of livestock and other animals for food or fur, including poultry and fish."

The first definition is also used in the wetland policy statement and is totally inadequate. When the definition says "means" it precludes other activities. For instance, plowing is being replaced by no-till seeding, and there is no mention of growing fruit and vegetables, tile draining or irrigating and related activities in growing fruit and vegetables. When the word "grazing" is mentioned along with animal husbandry, it is obviously the intention to have an all-embracing definition.

It is important that the definition be all-encompassing because only named activities in process can be carried on in the boundary land around wetlands. No new activities will be permitted except by an EIS. Therefore, unless fruit and vegetables are included, would they be classed as new activities?

The second definition is the one used under agricultural land policies, goal D, in Comprehensive Set of Policy Statements. There is a similar disparity in the above booklet on wildlife habitat, which says:

"'Wildlife habitat' means areas of the natural environment where plants, animals, and other organisms, excluding fish, survive in self-sustaining populations and from which they derive services such as cover protection, or food."

The meaning of the above is quite different in meaning from the definition in the land use planning booklet of December 1993 and the one used by our county council to designate deer yards all over our county. That definition is:

"'Wildlife habitat' means areas of the natural environment upon which wildlife depend for survival as self-sustaining populations in the wild, including land and water needed for cover protection or food supply."

'Wildlife' includes all wild mammals, birds, reptiles, amphibians, fishes, and invertebrates. Areas included may be deer yards, nesting areas, aquatic habitat, waterfowl staging areas and habitat of endangered and threatened species."

The deer population in Prince Edward county grew naturally from less than 500 a few years ago to an estimated 5,000 or more now without deer yards and without protection. The deer yards in the official plan cover rural land, which is farm land, and development is restricted because of the deer. Deer have become predators to farm crops and orchards. They are only in the deer yards on the coldest days, and it is used as a base to forage on orchards and other areas in the winter.

It must not be mandatory to establish deer yards in an official plan, but it must be only optional. The definition in the Comprehensive Set of Policy Statements, if it is the definition currently being used, seems to indicate that areas where wildlife survive in self-sustaining populations need not be a designated area. However, if they were designed as "significant" wildlife areas as set forth on page 1, little or no development could take place.

The proposed Bill 163—and this is not our forte but we're venturing into it—will hamstring municipalities to make any independent decisions which are not prescribed somewhere in the Planning Act or elsewhere. Indeed they will be restricted to collecting taxes, repairing roads and



paying out welfare. Everything else will be a provincial law. Instead of giving more power to municipalities, it has taken it away.

The proposed bill will not be kind to farmers in Prince Edward county. The amendments are not common goals, the policies are not clear, and it is not good planning, in our view.

We thank you for listening to our comments and look forward to discussion.

I'm not sure whether Mr Taylor would like to lead off or Mr Danforth. Jim, do you want to make your comments?

**Mr Jim Taylor:** I will, but I hesitate. I hope to have mellowed in my years of absence from Queen's Park; I've never been known for my lack of candour.

The concern I have and that others share with me is that the proposed new Planning Act really completes the reversal of the philosophy of community planning. I go back to 1946 when the Planning Act was first enacted, and it's interesting that the Conservation Authorities Act was first passed in that year as well. It was thought at the time that if planning was not embraced by the local community, it wouldn't work. We were talking about physical planning, community planning.

In the province, there's a great divergence of values and interests, we know that: cities versus the rural areas; communities of interests. As a matter of fact, the riding distribution was based on areas with a community of interest. Our values are different, and in the country we like to think we're not going to be governed by the Great White Father at Queen's Park, or anywhere else.

We fear we're suffering immensely from state paternalism. Now, with this Planning Act, it's not planning from below, from the grass roots; it's imposition from above. And to complete that—and we followed the Sewell commission very closely, made more than one presentation. I say "we." I have on behalf of our local federation of agriculture; we're all members of the OFA. We've expressed these concerns to Mr Sewell and his colleagues on that commission, without results of course, because I suspect the master plan or the grand design was there and it was a question of filling it in and rationalizing the conclusions.

When the Sewell commission completes its report and the policy statements are published—and as you know, the policy statements are adopted by order in council, by cabinet, and they are adopted pursuant to the Planning Act. The Planning Act has to be in place to provide for the policy statements, and the policy statements flow from there and then become law. Once that order in council is adopted, it's a part of the legislation.

You look at the comprehensive policy statements and you wonder, what potential for flexibility or local decision-making is there? Worse than that and what really frightens me, after many decades of dealings with government both inside and outside, is that you have a bureaucracy—and I don't say that in any demeaning way—that has to administer this law. The policy statements, if you look at what has been circulated, provide and expect that there will be a guideline or a series of

guidelines that are issued, because the policy statements are so comprehensive themselves and so broad that now you have to explain what these things mean. That's what it says in here.

**1610**

So the ministries—it's not government—then issue guidelines, just like the Income Tax Act, and we have all of these guidelines and so on and God help anybody who tries to understand them. The guidelines will probably be more restrictive than the policy statements themselves when they come out; that's our fear. So you have a reversal of a system of community planning from the grass roots up to the top down, and it's all-pervasive. There's really no potential for flexibility in terms of the rural areas. Either you farm or you live in what we call a growth-and-settlement area. You're aware of the policies in place now in terms of growth-and-settlement areas. You're either on pipe sewers and water in a city or a town or a village, or else you farm, because there's no room for rural development.

The OFA is saying: "Hey, farming isn't all that good, and what you're doing is stripping us of our inherent rights of ownership. All of the incidence of ownership is being stripped away, and we'll end up with land that we may or may not be able to grow something on, depending on whether there's a market or not for it."

The other point I'd like to make is that the Planning Act has ceased to be a document of physical planning; it's now social planning. It's really a combination. It's almost a manifesto. I certainly wouldn't want to get partisan, as I've heard some remarks here today—I've never been noted for that, of course—but it's almost a socialist manifesto in terms of state paternalism, and that concerns me very much.

Mr Wiseman, I believe it was, mentioned to our predecessor at this table that he was concerned about the integrity of planning. In other words, presumably you get into the municipalities and they play footsie with some of the councillors, with the developers and so on. But I remind you that if you look at some of the examples where you have all the power at the top—and I would point to the Toronto Islands situation, where you have parklands, and it's zoned for parklands, and you have wetlands that we're concerned about as farmers. You have to spend something like \$4 million for diking up those wetlands, and what happens? The province runs roughshod over that and says, "Oh, we're going to put 131 housing units on it." Now, that's integrity.

The granny flats issue: You have all of the community planning that's been done in single-family areas and you're trying to do what you can for your community and then the province, with a sweep of its hand in a piece of legislation, says, "Okay, put the folks in the basement or up in the attic or back in the back."

**Mr Gary Wilson:** As opposed to sweeping them under the rug; you did that for years and years.

**The Chair:** Hold on, Mr Wilson.

**Mr Taylor:** What I'm saying is that I don't think anyone holds a monopoly on integrity. Those are some of the concerns.

There's one point that I would like to make, if I may, because I know that inherent in this document is a political and economic and social philosophy that I don't think we're going to disturb, to be honest with you. I've been around long enough to understand that. But what I would ask you to do, and then I'll shut up, is to ensure that the policy statements, before they become law, are aired in the House, in the Legislative Assembly, where they can be debated and where the House, that public forum, acts on them, not behind closed doors in cabinet, because I'm more concerned about these policy statements than I am about a lot of the wording in the Planning Act.

I disagree with the philosophy of the Planning Act; I've already said that. But it's in place, and I know that's what's going to happen. What I'm saying is, please don't just let the administration, the ministry personnel, draft these policy statements, have cabinet adopt them and then impose them on the people of Ontario.

In the material before us, we see where wetlands can be designated by ministry staff really. The municipalities have to comply with all of these policy statements. We don't have a chance of exercising any independence of mind or any choice or any freedom in terms of what we do with our land or how we plan our communities. We don't have that. So I ask just for that one thing. I think that might be successful if you could have the policy statements aired in the House.

**Mr Matthie:** I just wanted to make sure that you understood that Mr Taylor is a member of our executive of our Prince Edward County Federation of Agriculture. He is not here in his own right; he's here to help us. We thank him very much. Mr Danforth has a few comments.

**The Chair:** Please do.

**Mr McCrae Danforth:** It's interesting to be here and see what's going on. I received a copy of a letter from the Minister of Municipal Affairs, Ed Philip, dated May, setting out the setting up of the advisory task force. I found it interesting that the membership of that task force consisted of 12 members, four from each of different groups; one was the municipalities. I'll read it here: four representatives from each of the Association of Municipalities of Ontario, the Ontario Environment Network—now I'd never heard tell of that before—and the development industry to ensure that there is a smooth transition to the new planning system across the province.

What I find is quite an oversight is the fact that the people who are most important here, the ones who have the most to lose or gain by this, are the property owners. In rural areas, those principally are farmers. They are not represented at all. Whether this was an oversight, I don't know, but on such an important thing I think that the farmers, as the major component of the property-owning people in our riding, should have been equally represented.

Also I've had news releases put out by government offices to the effect that municipalities will be given greater control of the development process. As we've heard previously by many who can express themselves much better than I, the result of the process seems to be the opposite. Municipalities really aren't going to have

any power. All they're going to do is enforce regulations and stipulations that are sent down from on high. Their ability to have much input is very limited.

This is an example of your top-down planning. You've got all your criteria being imposed by Queen's Park, you've got the rigidity of central planning, and this doesn't allow input from the local level or from people who have different ideas. It's very detrimental to progress and growth, in my opinion, in this province. We've seen the results of it in many socialist countries, where they've tried to run everything from a central city or place, and it has not been conducive to good growth.

1620

There's one little thing that always comes out in the vision statement on these, going back to our county plans: We've got to protect our heritage and so forth. When I look at my heritage, I look back at the people who came into this area. We had UELs who came in here, and they worked. They had their own ideas and they grew and their businesses grew. They sent their sons and daughters all over the country, especially from Prince Edward. We've got a tremendous number of people who have gone out over the country, whether it be bank managers or premiers, such as Roblin in Manitoba. His ancestors came from Prince Edward.

I think we're not giving much recognition to the values that these pioneers brought into this district. I think that our legislation and what we put in should respect them and their heirs and assigns, that they'll use good judgement, and not try to run everything from the top down and give us a little flexibility.

One other thing in regard to this different area in regard to the deer. I understand that 24% of the accidents on the highways in Prince Edward county are deer-related. That gives you some idea of the number of deer and wild animals and so forth. To suppose that we need to give further protection for this type of wildlife, to me, doesn't seem proper. That's all I have to say for now.

**The Chair:** Thank you very much. I just want to make a clarification of my own with respect to what Mr Taylor has raised, and we can discuss this afterwards if he likes. I represent the Toronto Islands, as the member for Fort York. The housing that will be built will not be built on flood land. It's not on a floodplain.

**Mr Eddy:** None of it?

**The Chair:** The money that will be spent that you referred to is going to be spent in part to repair the old seawall.

**Mr Taylor:** I understand that.

**The Chair:** After many studies it has been determined it doesn't have to be replaced, just repaired; just as a point.

There are two and a half minutes for each caucus. So, Mr Eddy, I remind you if Mr Curling is to speak, you need to share that time. Mr Eddy?

**Mr Eddy:** Thank you for coming forward. We had the opportunity to hear the provincial executive of the Ontario Federation of Agriculture the other day, and they dealt with many of the same matters: farm owners being stripped of their development rights on their lands with



no compensation, the problem with the policies planning from the top down, many of the same things. Although there is a task force with representation from the rural community to develop guidelines for the implementation of the policies, the big problem, as I see it, is that the policies themselves are not subject to review. When I asked the OFA if it had any input whatsoever or was consulted with, the answer was no. It seems to me that that's awfully important. So, I'm very pleased with what Mr Taylor has suggested, that we ensure that the policy statements are aired in the House, so to speak, or something, reviewed. There's conflict between them, we understand.

**Mr Curling:** The concern of course, which you have raised very well—the fact is that it's an omnibus bill, it's a large bill, and given such a short time to present some of those concerns that you expressed so eloquently. Again, too, I think that with every omnibus bill the minister himself should be going around hearing this. We have great respect for the parliamentary assistant, who of course could sit on one of the sides over there, but again, my dear friend the parliamentary assistant will not be privileged to be in cabinet to hear the policy that will be discussed in cabinet. So you made a very good point, that we just hope—and I know I'm confident enough—that he will express these very important thoughts to the minister.

**Mr Taylor:** Could I just respond shortly?

**Mr Perruzza:** You were a minister, weren't you?

**Mr Curling:** Definitely, and proud to be.

**Mr Taylor:** I'm sure this has been brought to your attention, section 20, paragraph 3.2, the authority to pass zoning bylaws. You notice now how broad the prohibition is. At one time it was just swampy land, but now: "For prohibiting the erecting, locating or using of all or any class or classes of buildings or structures...that is a significant wildlife habitat"—and I'm thinking in terms of the rural community again; it could be a barn or anything—"wetland, woodland, ravine, valley or area of natural and scientific interest," and then you go on, "that is a significant corridor or shoreline of a lake...." We have 500 miles of waterfront, we're an island basically, and most of our land is either a provincial park or it's an ANSI, an area of natural and scientific interest, or it's a provincially significant wetland, it's a marsh, bog, fen or whatever. Mr Johnson knows that better than anybody, coming from Athol. It's a straight prohibition in terms of using your land.

The farmers own about 14 million acres of land in Ontario. They have a very significant interest in all of this, and what you're saying to them is, "Hey, we're stripping you of the incidence or elements of ownership."

**Mr Curling:** I'd like to make a clarification.

**The Chair:** I'm sorry, there is no time.

**Mr Curling:** Well, he can make a clarification; I'll make a clarification here.

**The Chair:** Mr Curling, I'm sorry, there is no time.

**Mr Curling:** But I have to make a clarification. I want to tell the member over there that, yes, when I—

**The Chair:** Mr Curling, that's not helpful. Mr Carr.

**Mr Carr:** Thank you very much for your presentation. You did a good job. I'd heard, Jim, about what a great speaker you were. I never had the opportunity, but you certainly were; you cut through it very well. So thank you very much, and I think you hit on the nature of why the frustration is out there. I think, as you well know, it's frustrations with governments of all political persuasions. People are very concerned when the top-down—it's heightened under this government for many reasons, but I think they are very leery of all governments with this top-down. I think everybody would feel that way, and that's why there's so much frustration out there. But I want to be very clear. Your branch of the Ontario Federation of Agriculture wants this bill defeated?

**Mr Taylor:** If you're asking me, and we haven't solicited the total membership, I would say definitely yes; unequivocally yes. What do you say?

**Mr Matthie:** Yes, definitely.

**Mr Taylor:** All right, the three of us here say yes.

**The Chair:** Mr Carr, very quickly, you're only allowed two and a half minutes. Sorry.

**Mr Carr:** With this bill being defeated, one of the things when the government does change, if some of the policies that come forward—and let's not talk about which political suasion is—but in an ideal world with a good minister with good policies coming in, can this bill then somehow work?

**Mr Taylor:** Again, I'll disregard your preface in answering that question.

**Mr Carr:** Of saying, "with a good minister"?

**Mr Taylor:** I think you'd have to start over because the innate philosophy of the bill is all wrong, in my view. So you'd have to start from scratch.

**Mr Perruzza:** I just want to pass for 30 seconds to Mr Johnson and then I want to come back and ask my question.

**Mr Paul Johnson:** I wouldn't get a chance to say anything if Mr Perruzza didn't allow me that 30 seconds. I want to say that I agree with you. I think the definitions need to be more specific, because they are too vague, and that allows a misrepresentation of what was intended or what might happen indeed. I just wanted to get that on the record, because I do agree with it.

**Mr Perruzza:** To Mr Taylor, you talked about the philosophy of land use planning and how we've moved away from sort of a physical philosophy to sort of a social philosophy. My question to you is, how would you make the rules clear for the industry, protect the environment and all of those concerns, the agriculture concerns and all the rest of it, and ensure good land use planning? What would you do?

**Mr Paul Johnson:** You're asking Mr Taylor?

**Mr Perruzza:** Yes, Mr Taylor.

**Mr Paul Johnson:** Sorry.

**Mr Taylor:** Well, first of all, may I point out that we're not just talking about the big bad developer any more, because with the unravelling of the large real estate corporations, and you can mention the Bronfmans and the

Reichmanns and the Bramaleas and all the rest, there's a lot of real estate that's gone on the market that the unions have picked up or the pension funds. So they're in the business in a big way.

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**Mr Perruzza:** So I say make the rules clear for them.

**Mr Taylor:** Yes. So I just want to make that clear, that we're talking about everybody.

**Mr Perruzza:** Exactly, yes.

**Mr Taylor:** We're not talking about any particular segment of society, whether it's Algoma Steel, run by the workers, or whatever it is.

I think that fundamentally the planning should be at the local level. I'm dedicated to local self-determination and I think it's important in a province and in a country this vast that we recognize the regional differences. I think local self-government is so important and I think we're smart enough at the local level, we're informed enough, intelligent enough to make the kinds of decisions that will meet the needs of our own communities.

**Mr Perruzza:** In that case, would you agree that that's the way it's being done now, and would you also agree that we have—

**Mr Taylor:** No, I don't agree that that's the way it's being done now.

**Mr Perruzza:** No?

**Mr Taylor:** No, it's not.

**Mr Perruzza:** Who's it being done by?

**Mr Taylor:** Again, you have the provincial guidelines, you have the provincial policy statements. I've already mentioned the growth and settlement policies—

**Mr Wiseman:** Local councils and councillors ignore all those.

**Mr Taylor:** They don't ignore them. They can't.

**Mr Perruzza:** So you're saying—

**The Chair:** Mr Perruzza, one more follow-up question.

**Mr Taylor:** I don't want to get into an argument, Mr Chairman.

**The Chair:** Mr Perruzza, a final follow-up, please.

**Mr Perruzza:** I don't mean to be argumentative.

**Mr Taylor:** No.

**Mr Perruzza:** So you're saying, "Relax the rules and we will eliminate the environmental disasters that are happening, we'll reduce the bad land use planning that's happening out there, and the rules will be clearer, more straightforward for, for the lack of a better word, the stakeholders, the industry, the developers and everyone else." That's what you're saying?

**Mr Taylor:** All I'm saying is that the local people, through their elected councils and their appointed planning boards, are competent to make the kinds of decisions that relate to their communities.

I'm not suggesting that there are not matters of provincial significance. We've done that through special legislation, whether you subscribe to it or not; for example, the parkway belt legislation, the Niagara Escarpment

legislation. There is special legislation to deal with matters—right now you're dealing with, for example, the Oak Ridges moraine. That's an area of significance and importance to the province, stretching from Trenton right through to the Niagara Escarpment, so you have all your policy statements there.

**Mr Wiseman:** And they make—

**The Chair:** Mr Wiseman, we're running out of time.

**Mr Taylor:** What I'm saying is that the policy statements are out there now that the municipalities have to comply with. That's why it takes five years.

**Mr Perruzza:** So I'm going to ask you again—

**The Chair:** Mr Perruzza, sorry, we ran out of time. Mr Hayes wants to make a point to clarify and then we're moving on to the next delegation.

**Mr Hayes:** Yes, thank you, Mr Chair. I just wanted to mention that Mr Eddy, in his comments, is correct up to a point when he says he asked Mr Roger George and others from the Ontario Federation of Agriculture if they had input into this. His question was in such a way that they had to—I don't know if they misunderstood it or not, but when I asked the question more directly and pointed out that there is a three-part committee—an implementation advisory committee task force, there's the technical committee, and then there's also the rural table which is a committee—they said, "Yes, we did have input in that," simply because—

**Mr Carr:** They still want the bill defeated.

**Mr Hayes:** —we have the Ontario Institute of Agrolologists, the Ontario Federation of Agriculture, the Christian Farmers, members from ROMA, county planners, the University of Guelph's rural planning, Friends of Foodland, economic developers, councils—there's a whole pile—Strathroy Foods. There was a dairy farmer, a poultry farmer, another person from the OFA—

**The Chair:** Mr Hayes, I think we get the picture.

**Mr Hayes:** —the anglers and hunters. No, I think this should be made very clear, Mr Chair.

*Interjection.*

**Mr Hayes:** Just a second. Now, the other clarification: In your presentation you mentioned that there are two definitions. Actually, there are not. That has been taken care of on agricultural activities.

**Mr Matthie:** Which ones are out?

**Mr Hayes:** There's one set, a comprehensive set of policy statements. Actually, the December 1993 document was changed as a result of broad public consultation in early 1994, as a matter of fact, 90 days of it, including the Ontario Federation of Agriculture and the Christian Farmers Federation. So I just wanted to point that out. Now, that may have been in there, but it's changed.

**Mr Carr:** They still want the bill defeated.

**Mr Hayes:** Mr Carr, you've had your say, and in the democratic process here we will go around the table.

**Mr Carr:** In spite of everything, they still want it defeated.

**Mr Perruzza:** Your solution is so simplistic because you're so irrational, that's all.



*Interjections.*

**The Chair:** No, we can do this after.

*Interjections.*

**The Chair:** Go outside, please.

*Interjections.*

**The Chair:** I want to thank you for taking the time to share your concerns with this committee.

**Mr Taylor:** We thank you very much for the opportunity of expressing our views and those of the association, of course, that we represent.

CITY OF BELLEVILLE

**The Chair:** We are going to invite the next deputation forward. We have the city of Belleville, Councillor Brian Smith and Mr Stewart Murray.

*Interjections.*

**The Chair:** Can I ask people to limit their discussions as much as possible. Welcome.

**Mr Brian Smith:** Mr Chair and members of the committee, we are very pleased to have the opportunity to address the committee this afternoon. My name is Brian Smith, councillor with the city of Belleville, and to my right is Mr Stewart Murray, director of planning for the city. I realize it's late on a Friday afternoon and we will certainly try and be very brief. The bus is out there. It's not idling yet, but we will try and move things along.

Mr Chair, perhaps we could ask Mr Murray to start off our presentation, and I will follow with a few general comments after that.

**Mr Stewart Murray:** The council of the city of Belleville has by resolution identified two primary concerns with Bill 163, the first one being that the proposed municipal planning authority provisions of the act do not address the need for broader local government restructuring to address the full range of municipal service delivery.

Secondly, the proposed changes in the legislation will require a major commitment on the part of the province to educate citizens, municipalities, the development industry and others as to the basic changes that are going to take place in the planning system if this legislation does proceed.

With respect to the proposed municipal planning authority there are a number of concerns. We would be creating a new level of local government, effectively, with the proposal as it is set forward now. There would be no direct accountability to an elected council or a single elected council. We would have a new, independent, special-purpose body based on a new and separate geographic unit that would not match the service area for the delivery of other local government services.

This would complicate service delivery therefore with respect to public works, fire, police, public transit, transportation, sewer, water and the full range of other local government services. Separated municipalities which would contain the larger population units may effectively begin to subsidize the planning operations of other smaller municipalities.

There may be a duplication of staffing in that the proposal as it sits now would require that additional staff

be retained to address administration of the municipal planning authority, and no doubt municipalities, members to such an authority, would wish to retain their own staff for day-to-day planning administration.

The concept as it is set forth in the legislation also may weaken the only existing regional planning authority that exists in much of Ontario, and that's the county planning structure.

The other provisions of the act related to strengthening the protection of natural environmental features are long overdue and are needed to address the cumulative impact of development across Ontario.

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The reintroduction of lapsing provisions for subdivision approvals will assist municipal efforts related to growth management and the assignment of sewer and water servicing capacity and are supported by the city of Belleville.

The elimination of the Ontario Municipal Board appeals for minor variances raises many questions related to fairness and natural justice which may prove difficult to address in the context of a review of variance decisions by municipal councils.

Finally, the requirement for municipal planning to be consistent with provincial planning policy will provide for a more consistent application of good planning principles, will reduce ambiguity and, in practical terms, will recognize what is now current provincial practice.

That concludes my remarks.

**Mr Smith:** If I could just build for a moment on a couple of the points Mr Murray mentioned, as a member of the city planning committee for the past six years, some of the difficulties that we face are that we are dependent, and I include the city of Belleville in this, as a set of independent municipal councils, each making decisions which are obviously in their own best interests.

As well, the city of Belleville has a multiplicity of service agreements with our neighbours—Sidney township, Thurlow township, the township of Ameliasburgh—concerning sewer and water and the complexities that are involved in administering these agreements with the municipalities and the various ministries.

Perhaps a third point that I'd like to mention is the conflicting administration units that relate to other services such as health, education, social services and transportation. As a couple of suggestions, we would certainly offer that the city of Belleville could take a lead in establishing a joint planning advisory committee with perhaps the southern portion of Hastings county. We believe this would be much simpler initially to set up and establish, perhaps cheaper than going to the full MPA route as a first step.

If that fails, we certainly might see the need for substantial government restructuring. That would hopefully not occur, but we would like to see and be authors of our own destiny as much as possible. I think those comments have been reflected by previous presenters.

Just before we conclude I'd like to make a couple of comments concerning the disclosure of interest act. As a member of the procedural bylaw committee for the city

of Belleville, I can certainly support many of the directions that are proposed in the conflict-of-interest section of the act. We did, as a committee, make a review of the earlier drafts of the legislation and made recommendations concerning those to AMO. We were pleased to see that the government listened to some of those recommendations.

I don't believe, as an elected member, that any of us should have any difficulty with declaring the assets and so on of our children and our spouses. I think the definitions of pecuniary interest and the exceptions thereof would be helpful to members of council and the general public, to help to understand more what conflicts of interest are and the good points of the legislation.

Exceptions that are indicated in section 4 that do not apply I think would be of assistance to us as well. I'm pleased to say that the city of Belleville, in its procedural bylaw, currently follows the process set out in section 4, with the exception of leaving the meeting until the matter is no longer under consideration.

We do have a concern in the general cost of administration to local government in maintaining the registry, but we also recognize that this perhaps is a necessary cost that would have to be incurred in order to have the registry work properly.

Again, I don't believe that the inspection of the registry's documents should necessarily propose a problem to elected members. This particular chunk of legislation, I believe, is long overdue and one that certainly we support as city council. I would be pleased to answer any questions.

**The Chair:** Mr Perruzza and, if there's time, Ms Haeck.

**Mr Perruzza:** Mine will actually be very short, a very brief comment. First of all, I'd like to get on the record that I enjoyed coming out to Prince Edward, Lennox and South Hastings. While I'm here, and it's beautiful country, I would like to also extend my appreciation for the good work that Mr Johnson does in the Legislature as the member for Prince Edward-Lennox-South Hastings, for all of his hard work and good work there on behalf of the citizens of this riding. Thank you.

**Ms Haeck:** I appreciate your presentation. I'm not sure if you've had a chance to hear some of the comments of Sidney township, but I suspect they're not foreign to you. You've probably heard them before.

**Mr Smith:** Right.

**Ms Haeck:** Your suggestion is that you might like to move to a South Hastings planning area as opposed to something that is the greater Quinte area. Could you refresh my memory here, if I've missed it, as to why South Hastings—what I gather from the map and my own knowledge of the area, you are contiguous with Sidney and therefore really would fit very nicely into that greater Quinte area, if you're not dealing with that now.

**Mr Smith:** We certainly do have relationships with the planning staff—that's Mr Murray—on matters that are of mutual interest, and do work closely with him. But I think our planning advisory committee and city council see perhaps the first step, and one in which the city

should take a leadership role, as trying to bring together a joint planning advisory committee before we get into the full-blown MPA aspects which may not serve us perhaps any better. There are costs associated with that and I would think that would be an initial first step. We are not totally opposed or foreign to the idea of an MPA, but I think there has to be good faith demonstrated on the part of all the participating municipalities, particularly Belleville, Sidney and Thurlow, in taking those initial steps, with the inclusion of course of the county of Hastings.

**Ms Haeck:** I would ask, not right now but possibly after all the questions are over, if possibly ministry staff could advise the deputants on the possibilities of undertaking what they propose. I would in the meantime defer to Mr Wilson.

**The Chair:** Mr Wilson, one last question from you and then we'll get an answer here.

**Mr Gary Wilson:** I have not a conflict of interest but a point of interest to make here, because I know Brian Smith in another context as a very helpful worker—actually, Brian, I'm not sure of your title—with the long-term care division in Kingston.

**Mr Smith:** Program supervisor.

**Mr Gary Wilson:** So it's interesting to see this happen. I just wonder what your comments are when you hear about bureaucrats in a different kind of context, suggesting that they're not all that helpful.

**Mr Smith:** I appreciate that opportunity to respond. I think bureaucrats certainly have a role to play. I think the legislation as proposed here and other pieces of legislation, as Mr Taylor indicated to us on granny flats and second apartments in residences and so on, are perhaps responding to other pressures. At the same time, I think they tend to create additional pressures, particularly for local governments: inspections and things of that nature. Who is going to pay for those additional costs? They will have to be done and carried out. So I think there certainly is a role for the staff to play in developing those things.

I think we have to keep in mind as well the accountability and that the buck stops at the local council level and certainly at the provincial legislative level. I agree somewhat too with Mr Taylor's comments that we hopefully can work things out at a local level and not have a provincial umbrella that necessarily, and I say this with all due respect, is centred on the needs of Metropolitan Toronto and not necessarily serves our needs and poses additional pressures.

*Interjection.*

**Mr Smith:** I would hope so.

1650

**Mr Eddy:** I wanted to come back to this matter of the municipal planning authority. It was raised by a delegation from Sidney township. It seemed to me they were talking about a larger area than you were talking about, including the city of Trenton and the adjoining municipality in Northumberland.

I think you have the right idea: Proceed one step at a time and see how things go. Many separate municipalities, with either the upper tier or an adjoining local



municipality in an upper tier, have municipal liaison committees. They've worked well. They've even had joint studies where they deal with transportation and transmission corridors, the development of fringe areas and, with agreement, incorporate policies in each of their official plans without having an area.

I don't want to get into a local problem, but I think someone certainly is going to face it in the future. But still one step at a time might be the best. What do you really see as the solution? Do you see a new upper tier in the Quinte area? What do you really envision to deal with what seems to be a problem with servicing and development? Coordination, I guess, is what you're after.

**Mr Smith:** Certainly, one of the outcomes of the closer planning link would, I would hope, ultimately lead us to the aspects of how we could restructure local government. The task would not be an easy one. I think Reeve Arthur of Sidney township touched on it as well in his presentation where we have to have the will to do that as well as the greater Quinte advisory committee as the other—I think it's too large a geographic area to serve this particular purpose.

But nonetheless if we could look at where the pressures currently exist in South Hastings, city of Belleville, township of Thurlow, Sidney and Ameliasburgh where the growth and the activity—not to exclude the city of Trenton at all—but that I think would be an initial big chunk to look after and so on. I don't know whether Mr Murray has any comments.

**Mr Murray:** One of the difficulties with the Quinte area is that we have a situation where geographically we are touching on three different county administrations. To form one planning unit with three different sections of three different counties is going to raise as many questions as it may answer from a planning point of view.

The commutershed for the city of Belleville, for example, would extend 30 miles to the south and 50 miles to the north, far beyond just the townships that have been referred to previously. Where to draw the boundary for this authority is a real question in my mind. I think that by initiating a discussion through our own county, we might then be able to carry that further as we work some of these problems out and see what directions might work more effectively. There's no doubt that historically there's a long run of different services through the county system that the city participates in—

**Mr Eddy:** Oh, that you do participate in.

**Mr Murray:** —now; a wide range of those services. There are many other services that could also be tied together in that fashion, particularly transportation, sewer and water services and so forth, that could perhaps be managed on a very effective joint basis between the city and the county.

**Mr Eddy:** Some upper tiers have had official plans for, let's say, north Bruce, south Bruce and central. Something like that is probably more appropriate.

**Mr Carr:** Thank you very much for your presentation. If you've been here and heard some of the other

presentations, one of the concerns is giving too much authority to the province and the whole issue of more control locally versus the province. I wondered if you would be able to comment on that. Do you see it that way? What are your thoughts?

**Mr Murray:** At the present time the city is in a reasonably good position in that regard in that we have been delegated subdivision approval authority from the province; we have shared with the province the approval authority. We think that the proposed legislation proposes a series of changes that will not radically alter that. We think that is appropriate.

**Mr Carr:** In some of the recommendations you've put forward through amendments, you'd like to see those initiated and go through the clause-by-clause section then?

**Mr Murray:** Yes.

**Mr Carr:** Anything else that you'd like to see done?

**Mr Murray:** Not that I can think of offhand.

**Mr Carr:** You look like you thought it would take an hour to go through it, that's all.

**Mr Smith:** If I could leave one last thought on that comment it is that, again, keep in mind that perhaps all that fits well in Metropolitan Toronto—and I say that with all due respect—does not necessarily work out here. We recognize the reverse is true as well. We would ask that this be kept in mind.

**The Chair:** We thank you for participating in these hearings and thank you for sharing your ideas with this committee.

*Interjection.*

**The Chair:** Oh yes, there's an answer to your question you raised; yes, sorry.

**Ms Dewar:** My understanding of the question is whether or not a joint planning advisory committee would be something that would be feasible.

**Mr Hayes:** Yes.

**Ms Dewar:** Pat has the current provisions in the act. It would appear that this would be something that's feasible. But what we would like to do is get some more information from you and do a bit more work on the feasibility of that.

**Mr Smith:** Yes. We have some more homework to do as well.

**Mr Curling:** I wanted to say that this is the last part of our presentation out here and I would like to thank the staff for the excellent work they have done, the ministry staff and the other support staff, because I know we move each day. I just appreciate the work they've done.

**The Chair:** I was going to do that on behalf of the committee next week. But no, we appreciate the thanks the staff is getting at this time. We concur with that comment.

This committee is adjourned until 9:15 in Toronto, Monday, September 12.

*The committee adjourned at 1658.*







## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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### **Substitutions present/ Membres remplaçants présents:**

Carr, Gary (Oakville South/-Sud PC) for Mr Tilson

Eddy, Ron (Brant-Haldimand L) for Mr Murphy

Grandmaître, Bernard (Ottawa East/-Est L) for Mr Chiarelli

Hayes, Pat (Essex-Kent ND) for Mr Malkowski

Johnson, Paul R. (Prince Edward-Lennox-South Hastings/ Prince Edward-Lennox-Hastings-Sud ND)

for Ms Harrington

Perruzza, Anthony (Downsview ND) for Mr Bisson

Villeneuve, Noble (S-D-G & East Grenville/S-D-G & Grenville-Est PC) for Mr Harnick

Wiseman, Jim (Durham West/-Ouest ND) for Mr Winninger

### **Also taking part / Autres participants et participantes:**

Ministry of Municipal Affairs:

Dewar, Diana, manager, municipal planning policy branch

Hayes, Pat, parliamentary assistant to minister

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** Stobo, Carolyn, research officer, Legislative Research Service



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Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 12 September 1994

# Journal des débats (Hansard)

Lundi 12 septembre 1994

## Standing committee on administration of justice

Planning and Municipal Statute Law  
Amendment Act, 1994

## Comité permanent de l'administration de la justice

Loi de 1994 modifiant des lois  
en ce qui concerne l'aménagement  
du territoire et des municipalités

Chair: Rosario Marchese  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICECOMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Monday 12 September 1994

Lundi 12 septembre 1994

*The committee met at 0918 in room 151.*PLANNING AND MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT DES LOIS  
EN CE QUI CONCERNE L'AMÉNAGEMENT  
DU TERRITOIRE ET DES MUNICIPALITÉS

Consideration of Bill 163, An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes related to planning and municipal matters / Projet de loi 163, Loi révisant la Loi sur la planification et l'aménagement du territoire de l'Ontario, la Loi sur les conflits d'intérêts municipaux, et modifiant la Loi sur l'aménagement du territoire et la Loi sur les municipalités et modifiant d'autres lois touchant des questions relatives à l'aménagement et aux municipalités.

MICHAEL VAUGHAN

**The Vice-Chair (Ms Margaret H. Harrington):**

Good morning to the committee. I would like to welcome you back to Toronto after your journey last week. Our chair is going to be a little bit late this morning but we will proceed. We would like to call upon Fraser & Beatty, that is, Mr Michael Vaughan, who will present this morning. You have 15 minutes, so please go ahead with your presentation and any time that is left we will use for questions and answers.

**Mr Michael Vaughan:** Thank you very much. My name is Michael Vaughan and you should have before you two things: a letter from me, and as well an article that was published in *Municipal World*. I hope you have those. I will be referring to the article in *Municipal World*, particularly on page 2 down at the bottom. There's a section that says "Minor Variances," and I'll be referring to that section because that's what I wish to speak about.

What I'm asking you to do is that section 25 of the bill, the section dealing with minor variances, I'm asking that that section not be approved, and if I could just tell you sort of where I'm coming from about that. I'm kind of an old warhorse in the field. I've been practising planning law and teaching it and so on for about a quarter of a century. I don't represent anyone here but me. I'm only here because it makes me feel good to operate in a system that's relatively efficient and fair and it would make me feel bad to operate in a system that is cumbersome, or even more cumbersome than now, and that might not be as fair as the present system, and that really relates to the role of the OMB.

There are three basic reasons that I would urge that

section 25 not be enacted. The first is essentially that the system works fine now. No system of this sort is perfect, but it's relatively efficient, relatively fair. What has happened here, as is apparent from looking at the underlying documentation, is that the recommendation to delete the appeals to the OMB is really based on two misconceptions. The first is that minor variance appeals are trivial and inconsequential, and that is not true in fact and not true in law.

The leading case, and I won't go into it, but basically a minor variance is to a large extent what the committee of adjustment or the OMB says it is. They have to look at all the circumstances and make a decision. So minor variances can and often are very important to applicants and very significant, both to those who support them and those who oppose them. They are not always or necessarily minor in the sense of being small matters or trivial matters.

The second misconception, and I referred to that at the bottom of page 3 of my article that you have, is that I think the Sewell commission might have got its statistics wrong when it comes to the OMB. In fact, whereas the Sewell commission thought that 28% of the OMB appeals involved minor variance in appeals, it consumes only about 6% of the OMB's time, and that time is diminishing because of case management and ADR. So the system is not clogged with committee of adjustment appeals.

The second reason that I would urge that it not be approved is that the changes would generate more cumbersomeness than now exists. There's no way, for example, that most municipal councils can hear committee of adjustment appeals on a proper basis. So they will inevitably delegate it to one of the groups referred to in the act. I think that will generate much longer hearings because people will want a full and proper hearing. If there is no appeal to an impartial board, they'll just have to have longer hearings or else go by way of the alternative route, which is the rezoning. So I think that the changes proposed in section 25 will lead to more work for people like me, but it doesn't lead to any greater pleasure; it just bogs the system down.

The third reason I would urge that it not be approved is that I think removing the OMB appeal would generate an unfairness in the system. To a large extent, the OMB is the salvation of the planning system in Ontario. It's not perfect, but it's what keeps us honest and it's what people think keeps us honest. One can imagine that if major matters can be dealt with by councils or by appointed officials, by committees of council without appeal and without scrutiny, that that in effect circumvents the intent



of the Planning Act; that is, if you have the votes sewn up, if I could put it that way, you go through the committee of adjustment or the delegated official and no one can touch you, you can't be scrutinized except by a court, which is unlikely and expensive and even more cumbersome. So I would think that there's every incentive to leave the process as it now stands and leave the appeal to the OMB in place. That's the way the system should operate.

I don't intend to read that part of the article that you have—I'm sure you have a lot of material to read—but if you have any questions, I'm happy to try to address them.

**The Vice-Chair:** Thank you very much, Mr Vaughan. Each party has approximately three minutes, and we'll start with the Liberal Party. Mr Grandmaître.

**Mr Bernard Grandmaître (Ottawa East):** It's nice to hear that the OMB is doing a good job because for the last 20 or 25 years I've been hearing all kinds of bad reports on the OMB, and for the last couple of weeks the OMB is now the salvation of planning in the province of Ontario. It's good to hear this.

I realize that you're not the only one that's concerned with section 25 removing the appeal process to a minor variance, but won't you agree with me that not only in this bill, in Bill 163, there's no definition of "minor variance" or "minor variances"? Don't you think if this bill stands as it is we will need to define "minor variances"? Right now a minor variance to one committee of adjustment is very different from another, so there's no consistency in minor variances. Do you think this would improve Bill 163 by adding a better definition of minor variances?

**Mr Vaughan:** The courts have dealt with what a minor variance is.

**Mr Grandmaître:** Not consistent though, you'll agree with me?

**Mr Vaughan:** Well, the court is consistent in saying that it's up to the committee to decide in all the circumstances that apply. In order to answer the question, I appreciate the intent of the question, one would want to look at the definition. It would be very hard, I think, to draft something that's sufficiently circumscribed and sufficiently broad.

Zoning and planning matters don't come neatly tied up and they deal not only with new development in new areas, greenfield development, which is much easier to deal with, but they deal with the knitting of an urban fabric in established communities and they deal a lot with imponderables, or at least matters that are hard to quantify, like if you see a minor variance is not more than 3% or 10% of the zoning standard. If what's permitted on a site is one million square feet, 10% is an extra 100,000; or if what's permitted is three storeys or 30 storeys—I think it would be very difficult to draft, but I would like to defer answering the question until I would see what the draft might be.

**The Vice-Chair:** You have one more minute, Mr Grandmaître.

**Mr Grandmaître:** One more minute. Again on minor

variances, would you agree with me that some minor variances could affect official plans or zoning bylaws in the province of Ontario? I know you've refused to define—

**Mr Vaughan:** That's one of the very interesting things about minor variances. A municipality is totally constrained by its official plan when it passes zoning bylaws. When it comes to minor variances the jurisdiction is much broader, it just has to "have regard to" the official plan. So that's why many matters are indeed processed as minor matters, as minor variances, if you have a good feel of the committee of adjustment, rather than by way of rezonings. That is, you often know you're going to lose on a rezoning because it doesn't conform to the official plan, there's no way an official plan could be processed, so you go through the committee of adjustment, do it as a minor variance. I could give you many examples.

**The Vice-Chair:** Thank you very much. We'll have to move on to the Conservative Party. Mr McLean.

**Mr Allan K. McLean (Simcoe East):** Welcome to the committee this morning, Mr Vaughan. Your views are very clear and it's not the first time that we've had them. We've had them from other delegates too that have appeared before us.

When I asked the question of the minister on the opening day as to what a minor variance was he didn't have the answer for it either, so I can see the reason why you're now looking at, and a lot of other people are, having it in there that you can appeal to the OMB. When we have only 6%, I think what you're saying is what I'm agreeing with more all the time that I hear it, because there should be somebody there who you can really appeal to as a last resort.

I welcome your comments and I thank you for making your presentation this morning.

**The Vice-Chair:** Thank you very much, Mr McLean. We'll go to the government party. Who would like to speak? Mr Wilson.

0930

**Mr Gary Wilson (Kingston and The Islands):** Welcome to the committee and thanks a lot for your presentation. Mr Grandmaître mentioned the 25 years' experience with the OMB. I don't know whether he's not stuck in the past. I do think it is improving, not least because we've got a good chair there now from Kingston, I'm pleased to say, so we can expect further improvement.

But what I want to look at is the issue of the minor variance, as you've I think very clearly laid out your concerns about it. What we're trying to do, of course, is to put more decision-making in local hands. I'm wondering, as long as the OMB is there, will not people assume that that's going to be the ultimate destination for any kind of a resolution to a problem and therefore, if you put the emphasis on the local setting, will not then more emphasis be placed on that and then the committee of adjustment and indeed the council will become more responsive to local concerns?

**Mr Vaughan:** That's the virtue and that's the vice.

The system that people are living with now and have been for a long time is one that they perceive to be a system of rule of law, that is, they look at zoning bylaws, they look at official plans, those are the rules and everyone knows that.

The other system, more of an American system maybe, the rule of political discretion—in countries and nations where important matters that involve a lot of money and involve a lot of impact on people are decided on a purely political—I shouldn't say a "political" basis in this room, but that is something that I think a lot of people would not be comfortable with, having in mind our traditions and our type of society.

When I say the OMB keeps us honest, what I mean is—it's not perfect; I don't suggest it's perfect. God knows I've lost decisions there that I shouldn't have, and I hate to admit that in this room.

**Mr Gary Wilson:** Yes, with all objectivity.

**Mr McLean:** It's on the record.

**Mr Vaughan:** But in general, because it's impartial, the system works and people accept flaws along the way. The same with the courts, because judges often make wrong decisions too, but at least you get a fair shake at it; at least you get a fair hearing.

**Mr Gary Wilson:** And you don't think that's possible in the local setting in the way that council works?

**Mr Vaughan:** You know, you get 25 neighbours on one side and one guy on the other or you get a developer—I mean, I don't know whether you've been in municipal politics, sir, but lobbying plays a very large role. It's very political and it's supposed to be political. They're elected politically. They're not supposed to be impartial or independent; they're supposed to express the wishes of the people.

I think there is a very healthy thing in the act and that, I think, is section 70, the provision for development permit zones, which will give council immense discretion. But on this particular issue, there are going to be fights about matters of minor variances. Whether it happens in the courts or before the OMB or politically, there are going to be fights. The present system channels and deals with those fights in a relatively economical and impartial way. It sometimes makes wrong decisions, though.

**The Vice-Chair:** Thank you very much, Mr Wilson, and thank you, Mr Vaughan, for presenting to us this morning.

#### CANADIAN BAR ASSOCIATION—ONTARIO

**The Vice-Chair:** Now I'd like to call upon the Canadian Bar Association. We have the president, Mr Igor Ellyn, and the chairman of the subcommittee, Mr Jim Harbell. If you would come forward, you have half an hour for your presentation. If you would begin by introducing yourself and all of your colleagues here and then make your presentation, I hope you will be able to leave some time for questions. Please go ahead.

**Mr Igor Ellyn:** Good morning, members of the committee. My name is Igor Ellyn. I'm president of the Canadian Bar Association, Ontario branch. I have with me today, at my immediate right, Jim Harbell of the firm Stikeman Elliott, who is chair of the subcommittee

making the submission; at my far right, Virginia MacLean, QC, of the law firm of Cassels Brock and Blackwell, a member of the committee; at my immediate left, Bob Boxma, who is chair of the municipal law section of the Canadian Bar Association—Ontario and is at the law firm of Smith Lyons Torrance Stevenson and Mayer; and at my far left, Tim Bermingham, who is with the law firm Blake Cassels and Graydon. All my colleagues are experts in their respective fields of municipal and environmental law.

Mr Chairman, members of the committee, I am pleased to appear before you this morning to introduce the submission of the Canadian Bar Association—Ontario. As president of the association, I intend to make remarks of a general nature and to introduce the other members of the committee, as I have done today, who will take you through the recommendations. Indeed, Mr Harbell will speak on behalf of the committee.

The Canadian Bar Association—Ontario was established in 1916 and is the largest voluntary association in the province and in Canada, representing more than 15,000 lawyers, law students and judges in Ontario and more than 34,000 across the country. Among its many programs, the bar association conducts a review and critique of proposed legislation on a regular basis. The legislation is reviewed clause by clause by a committee of legal experts in the field who consider the legislation from legal, fairness and access-to-justice considerations.

L'Association du Barreau canadien, division de l'Ontario, est l'association bénévole des avocats et avocates et des juristes la plus grande en Ontario et au pays. Parmi ses divers programmes est la présentation de soumissions sur les projets de loi préparés par des experts juridiques dans chaque domaine.

In July 1991, some time shortly after the commencement of the Sewell commission, the bar association struck a committee of municipal and environmental experts to provide input to the Sewell commission and to make a submission about the recommendations the Sewell commission would eventually hand down. Our submission today addresses eight areas of concern, and I believe the copies of it have been distributed to each member of the committee.

Each of the areas of concern is important, and Mr Harbell will take you through them, but as you will hear from Mr Harbell, the key difficulty with the bill is that we perceive that there is a fundamental reduction in individual property rights in favour of administrative expediency. Bill 163 was supposed to improve planning and development in Ontario, but we believe that in the case of property rights it does precisely the opposite.

I urge you, members of the committee, to give your careful consideration to the elements of our submission. The Canadian Bar Association—Ontario is not an interest group with a political focus. Rather, our objective is to ensure that access to justice, in an open and fair manner that protects individual property rights, is preserved. It should be kept in mind that open, fair access to justice is not only the stated policy of the current government, but of all parties in the Legislature. Our submission addresses legal process and not substantive planning policy, upon



which we concede there may be legitimate differences of opinion.

With this in mind, I ask you to give your attention to my colleague Mr Harbell, and I thank each one of you for the careful consideration you will give our submission.

**Mr Jim Harbell:** Good morning, Madam Chair and members of the committee. There are two major areas that I wish to address in our submission this morning. The first is that in the opinion of the Canadian Bar Association, the three goals set forward by the government last December have not been significantly achieved in Bill 163; second, there are a number of other problems with Bill 163, and I'd like to enumerate some of them for you. Basically, my remarks are a highlight of a significant submission that we've given to you. We hope that it will be read and dealt with as part of the clause-by-clause review.

First, back to the goals. The goals the government said it wanted were more environmental planning; second, greater power for municipalities; and third, streamlining.

In our submission, with respect to the first one, the bill does not address, except in only the weakest and most ambiguous way, the issue of environmental assessment processes and official plan processes. There has been a significant problem in Ontario over the last decade that the Environmental Assessment Act doesn't work and that it's a completely parallel process from the planning process.

This was an opportunity in this act to address the two and put them together, because there have been difficulties in the province where somebody has gone through the planning process and has completed the planning process, only to have an objector with a less-than-valid objection start to use the environmental assessment process against them. Now was the opportunity to specifically combine those two to ensure that there was a strong environmental planning mechanism in the province, and that hasn't happened. It's simply an ambiguous provision that says that it might in the future.

**0940**

The second one was the issue of whether or not municipalities have been given any real new power under Bill 163. In our submission, Bill 163 is top-down planning. It does not. It's illusory only in the amount of power that it is giving to municipalities; for example, the area of "be consistent with." The nature of the policy statements that have been put forward, the mandatory prohibitory nature of them, means that a municipality, when they have to "be consistent with," have to absolutely and slavishly follow whatever the provincial government of day has set down in the policy statements. That is not giving power to municipalities. That is simply retaining the power at the upper level and demanding that municipalities follow it.

Second, regulation has been used to an alarming degree in Bill 163, and that will be used against municipalities in the future. The fact that an official plan amendment is defined by regulation, that an official plan can be defined by regulation to be different in Etobicoke than it is in

Mississauga as to the matters that have to be addressed, very specifically opens up municipalities to being governed by the provincial policies of the day.

Third, the issue of streamlining: In our view there is going to be so much uncertainty and debate about these new policies that the debate will be endless. It will start when an official plan amendment goes through, which will require a board hearing to debate what the policy means and how it applies. Then you turn around, and it may well be that a plan of subdivision, a plan of condominium or a rezoning bylaw will have to go through a similar kind of debate because it too will have to comply with provincial policies.

There have been those who have said: "Great for lawyers. It's a make-work project, you should be happy." We'd be happier if it was a stronger and more certain Ontario economy. We're not going to have any clients who are going to be able to deal with the policies that are under here because they're going to go to a different jurisdiction.

Those are our three concerns with the respect to the government goals that were put forward. What else is wrong?

What else is wrong takes me back to my last point, and the first one of those is that we believe that Bill 163 will seriously undermine Ontario's competitive position, and we have four reasons for putting this forward.

The first is that there is one expedited area within the Planning Act at the moment, and that's committee of adjustment appeals, and that's being taken away by Bill 163. We know, as lawyers who are well familiar with the process, that by taking away and leaving it at the local municipal level, it's going to turn it into court battles and it's going to turn it into rezonings, and rezonings are simply bigger planning matters that go back through the same process.

In rural areas, we've been told that you have a rural councillor who is only paid on a part-time basis. It's now going to be demanded of that rural councillor that they show up at a hearing at their local level and sit through it for some number of days, even though they perhaps have another business, a farm. Whatever it is they may have to deal with, they are now being called upon to do it.

In urban areas, where you've got agendas that are chock full, you're going to call upon, for example, the city of Toronto to deal with 200 or 300 of these appeals in one year. We think it unlikely that they're going to be able to give everybody a fair hearing.

Our suggestion is that a perfectly good and the only expedited approach at the moment under the Planning Act is being thrown out and it's being replaced with an inferior suggestion. Now, we'll leave that one there, because we think it's a very important provision and we suggest in our submission that there should be a leave-to-appeal process. We think that will solve part of the problem that the government has perceived. By a leave to appeal, we suggest that the Ontario Municipal Board be given the opportunity, perhaps even in writing only, to look at the appeals that come out of a committee of

adjustment and to decide whether or not they're valid and substantive and warrant a hearing. And on the committee of adjustment basis, we can see that that may start to solve some of the perceived problem of having a lot of committee of adjustment appeals on the OMB docket, while at the same time expediting the approach.

Second, we are concerned that Ontario's economic and competitive position is going to be undermined because of the debate about policies and guidelines that's going to take place.

I did a quick flip through the policies, and one that I saw that caught my eye says that "the wellbeing of main streets and downtowns should be fostered"—the "wellbeing." Now what kind of debate is that going to lead to? Is that the mental wellbeing of main streets and downtowns? Is it the physical wellbeing? Is it the economic wellbeing? That is only one of a number of examples within the policy statements that have been published that are going to be a field day for lawyers and objectors to have a go at debating what they mean and are going to cause undue public hearings.

That leads to uncertainty. It leads to a difficulty to say to an outside company that wants to invest in Ontario: "Here's the process you have to go through. You have to do A, B, C, and you will then have a building permit and you can open up your factory." Our view of it is that Bill 163 is greatly going to diminish the ability to tell an outside investor: "Here are the clear grounds that you need. Here are the clear rules of planning in Ontario that will get you an expedited building permit and get yourself open for business."

Third, we think that there is less flexibility for municipalities to respond to investment opportunities in Bill 163. The fact that it is top-down planning, that there are policies that are mandatory and prohibitory mean there can't be a local debate. There can't be a municipality that says: "We have this large new industry that wants to open up"—perhaps in an agricultural area, perhaps in a wetland area—"let us debate which is more important. How do we assess and balance those two?" That debate cannot take place because the policies are prohibitory. They simply say to the municipality, "You can't even look at that application," and that, we view, is taking away the flexibility of the municipality to address what may be valid investment opportunities.

Fourth, we're concerned about the issue of zoning certainty. The whole development permit process that has been suggested in effect says, "Fine, lift away the zoning and we'll impose by regulation a development permit." A zoning is what it is that an investor looks at. That's what they buy. They see a parcel of property. They see a zoning on it. The zoning tells them, "Yes, as of right, I am able to do this on my property." If you lift away the zoning, then you've taken away very elementary property rights that we believe are going to be a problem.

Our second major area that we believe is wrong with the legislation is the one that Mr Ellyn led off with, and that is that we believe it's going to sacrifice an individual's right to be heard in the name of administrative expediency. We have several reasons for suggesting that.

First of all, there is a provision under the OP policies

that says if you as a potential appellant don't participate in the local public process, if you haven't filed some form of a letter that says, "We object; here are our concerns," then at a later date, an approval agency or the Ontario Municipal Board can throw out your appeal simply because you didn't participate. We have a very strong concern that if you have a Hong Kong investor who arrives in this country six months after it's gone through the local process, looks at it, he may be looking at the issues that apply to that parcel of land for the very first time and he finds a substantive problem, we've potentially taken away his right to validly deal with it.

We believe that is going to put this province in a comparative basis against other regulatory places such as Ohio and Michigan and other places that industry looks at in comparison with Ontario, in a bad light, and unnecessarily so. That's a provision that should be struck.

Another area in the natural justice concerns that we have is that appeals can be thrown out simply because, in the opinion of the planning agency, they're premature, or in its opinion they have no apparent land use planning grounds. Those two, particularly if it's a delegated approval agency such as a region, are going to lead to potential abuse.

In their opinion, if it's thrown out on prematurity because it doesn't match the regional council's view of the day, or it doesn't match the regional council's view of what local planning is, it gets pitched out. It may well be that the regional council is pitched out in the next election, and by the time it comes around, what that person was proposing does legitimately match what should be going on in that municipality.

Our problem is that it throws it out without the ability of having a debate, without the opportunity for the Ontario Municipal Board to carry out its process the way it should, and we're very concerned that that can happen. We know it's part of streamlining—get rid of these appeals so you can get approvals quickly—but we think that in trying to balance those two issues, the government has gone too far with respect to throwing out potential appeals in the name of administrative expediency.

Allow the board to do what the board is doing a lot better these days than it used to, which is getting to the nub of the matter quickly. Let it decide whether or not a particular matter is a valid appeal, and whether it should be heard or whether it wants to hear somebody and then throw it out. That's a significant issue that we believe needs to be addressed.

#### 0950

Lastly within that area, we're concerned that the Ontario Municipal Board will be given the power to throw out a major referral or a major appeal without having a hearing. We're prepared to accept, as I said, that on a matter of a committee of adjustment appeal it may be appropriate to have the board deal with it in writing on a leave-to-appeal basis, but a significant referral or appeal, if the board thinks that it's going to throw it out, it should at the very least give somebody the opportunity to come forward and make a statement.

It's the old adage that justice must be seen to be done



as well as actually done. They may throw it out because it's not a valid appeal, but that person should be given the opportunity to come forward and have his day in court for an hour or two some morning and say to the board, "Here is why we thought it was sufficiently serious that we filed that appeal."

Third, in the area of what else is wrong, we're concerned that two classes are in fact being created here: the general public in one class, and the Ministry of Municipal Affairs joins that class; and secondly, another area being all other ministries of the government and Ontario Hydro. Ontario Hydro and all other ministries don't have to be consistent with policies; they simply have to have due regard to them. As well, they don't have to participate in the public process up front; they only need to file their position at the very last minute, as they have been doing. No chance that if they don't participate up front their appeals get thrown out.

We think that dual classification is (a) unfair, and (b) we think it's unnecessary, and isn't addressing one of the major problems that's going on at the moment. One of those problems is that ministries in the government—and they've been doing it for years, for whatever reason, I suspect it's because they've got a lot of work on their plate and in their perception too few people to do it—are not getting their responses out quickly enough. If an applicant knew early on, "This is the position of Agriculture, Food and Rural Affairs," or "This is the position of the Ministry of Natural Resources," or the Ministry of Environment and Energy, they may well amend their application, they may withdraw their application, but when they don't find out until the eve of an Ontario Municipal Board hearing and they've spent a lot of money and time and their own energy to get it that far, then they have to proceed. That has been a major problem, that those kinds of agency comments are not coming out until the last minute.

That hasn't been addressed in the bill, and unfortunately, so what we're saying is, it's been continued and in effect fostered because these two different categories have been created, and we're quite concerned about that.

Fourthly, I've mentioned that zoning rights are potentially being taken away, and we think that's a serious issue with the imposition of a development permit process.

Fifthly, we're concerned about planning by regulation and our belief that this is going to create less confidence. We believe that this Legislature has been created so that major planning matters should go through it, as part of statutory amendments. And it's unreasonable, for example, to suggest that the definition of an official plan should go through by regulation. That should be a matter of full and open debate within the halls of this body rather than going through by regulation, and we're concerned about the outside perception of that.

Finally, lastly, on areas that we believe are wrong, and again the highlights, we're concerned that in the conflict-of-interest side of the legislation, there has been a new regime that is being imposed on municipalities without giving them enough guidance and assistance. There are a number of municipal councillors out there who are

extremely concerned about whether they are going to unwittingly fall offside, and they don't want to fall offside. They'd rather comply with the regulation and not have to have the difficulties that may ensue.

One of the suggestions that we have, and we think it's a fairly easy one to address, is give them some kind of a provincial guidance, a body. For example, you could use the commissioner on election finances as a body that they can call on a regular basis, and staff it with a few experts who can provide assistance to the many local councillors across this province who are going to need help from time to time to ensure that they're complying with this legislation. We think it's a fairly easy way to deal with a significant problem.

Those are six areas that we think are significantly wrong with the legislation. I'm going to end it there, open it up to questions and leave you to address questions to any of my colleagues here. Thank you very much for listening to us.

**The Vice-Chair:** Thank you very much for your detailed presentation, Mr Harbell and Mr Ellyn. We only have two minutes per caucus and we'll begin with Mr McLean.

**Mr McLean:** I want to say to you that over half the wardens of this province have also made presentations and are opposed to this legislation. Do you feel there is any way we can make amendments to this legislation that would improve it, that would be satisfactory to the majority of the people? It doesn't appear to me, from what I'm hearing across the province, that there are many people who are very enthused about Bill 163.

Where you indicated in your brief, with regard to the three months, that we were supposed to have some type of clarification and draft to look at before the bill was finally introduced, if that had happened perhaps we would have been in a lot better position to deal with a more comprehensive and better bill. Do you think there can be amendments to this that would satisfy your group?

**Mr Harbell:** We've a bias, as a starting point, in responding to your question. When the commission was first announced and it was said that there would be a new Planning Act in the province, we took the position: "We don't need a new Planning Act. The system that we have at the moment isn't broken by way of legislation. It needs to be administered in a stronger and tighter fashion." That has happened, in any event, by way of government-announced policy, by way of people responding more quickly to the process. We could, from our perspective, set aside Bill 163, take the administrative gains that have taken place in the last three years and simply implement those, and there may be only a very few sections of Bill 163 that need to go forward. That would be one response. That's how we started.

Another response would be, we have suggested a large number of reforms. If all of those were implemented, it would be fair that there should be another public process, after they've gone into the next bill, before there was a chance for final reading, because we think the number of reforms we've suggested may strongly alter.

**Mr McLean:** That's what bothers me the most, that

we will go through this process, the ministry maybe will have 50 amendments and all the people who have made presentations will not have the opportunity then to have any input into those amendments. That's the sad part of the process we're going through.

I've asked for any amendments that the ministry's going to have. I think we've got one or two small ones but nothing major, and it appears to me there needs to be a major thrust in amendments in this legislation.

**Mr Harbell:** We had asked, as part of our submission in March, that the draft bill go out for public review prior to first and second reading. That hasn't happened. It may well be helpful that it should happen now.

**The Vice-Chair:** Thank you very much. The government party.

**Ms Christel Haeck (St Catharines-Brock):** Thank you very much. You've made a very full presentation, one which obviously we're going to have to take some time to think about.

There are a number of things you've said that I must admit I totally disagree with on a personal basis—not as a lawyer; a property owner living in small-town Ontario—and in light of the fact also that the people I represent have some very major concerns, as just John and Joan Q. Public, who feel that in many respects the planning process is broken, doesn't represent community needs. They have some major, major concerns about how expensive and definitely, shall we say, not—at least for appearance's sake. The OMB process, in fact, reflects the concerns of the little guy.

But we can agree to disagree on a number of those things. The little people of Ontario, the people who have come before us, have definitely indicated some major concerns with regard to this whole process and generally have some good things to say about this bill.

Very early on, Dale Martin, who has been acting as the provincial facilitator, gave us a technical briefing in this very room. As part of this process, he raised the issue of the complete application, which I believe you indicated you had some concerns about, in relation to an application being thrown out of the process because it was premature.

I think a lot of people I represent are very, very anxious to actually find out what is in the mind of the developer, how it is going to affect their particular neighbourhood, and would really like to have a complete application to deal with and have a complete understanding of what in fact those impacts are. To date, that is not the process. The actual neighbours tend to not have an understanding of what's happening.

1000

I would like you to give me, if you could, a response to the concept of having a complete application in hand. I understand you have some concerns about time limits, responses from different agencies, but I think the whole idea, the concept of having a complete application where everyone, the neighbours, not only the developer, are on an equal footing.

**The Vice-Chair:** If you have a very brief response. Ms Haeck has taken the two minutes already.

**Mr Ellyn:** There are two brief replies. The first one is, Ms Haeck, all of us are concerned about the rights of the little guy or the little woman, of all people in Ontario. It's precisely for that reason that the emphasis on the denial of or the reduction in individual rights, as opposed to administrative expediency, is an important element of our submission.

As to the more technical aspects, I turn again to Mr Harbell to respond.

**Mr Harbell:** We do not disagree with you. In our submission we believe there should be a full application available for public hearing, both the response from the agencies and a full response from the developer. And perhaps we're getting a little hung up, for example, on the word "prematurity." What we mean by that is that if somebody says, "We want a new subdivision on this side of town," we don't want somebody to simply be able to say: "No, we have no intention of growing that way for another 10 years. We're throwing it out because you're premature." It may well be that that's the right side of town there should be a new subdivision on and that the matter should be open for full debate. We don't think the developer or the applicant, whoever he may be, should have his application thrown out simply because that is premature.

But we agree with you that the application that they file should be a complete application. The ratepayers in the vicinity should have every opportunity to know what the environmental, the servicing, the land use consequences are of what's being proposed and proposed up front. That's one of the administrative changes that has been taking place in the last couple of years and that's helpful to the process.

**The Vice-Chair:** Thank you very much. I will move on to the Liberal Party.

**Mr Alvin Curling (Scarborough North):** Thank you very much for an excellent presentation from that point of view, and we have had the opportunity of going around to some of the communities already and have heard some of the things, as a matter of fact most of what you've said, consistently. The little guy, the little woman or whatever it would be has been saying that.

It seems to me that this political exercise has backfired in some respect. What you have said—it was very loud—the fact is that maybe we don't need a new legislation; what we do need is cleaning up our act. Many of the governments at all levels seem to have not carried out their administrative work effectively.

One of the major things that I have concerns about, even the process of this exercise of hearings, is that this omnibus bill, this large bill which wants to change the Planning Act and also to deal with the conflict of interest and also to deal with the Municipal Act, revising all of that, must be heard within half an hour in your presentation, which you have to rush, and many of the questions I want to ask to get some more input cannot be done because of two minutes in themselves. I know I am using that time just to express that concern I have.

Would you say then, how strongly can we say to this government or any government that if it cleans up its act



in getting the administration being effective, we may not need this bill? What more do you feel could be said? And one last comment: It seems to me, when you talk about top-down and policy-driven, the policy cannot be debated here, and it is the policy that we will be adhering to, not very much so the legislation, because it's the policy that will drive the order of the day.

**Mr Harbell:** It's important, in whatever process is used, that an applicant get a quick response, and that can be done by administrative changes as well as by legislative changes. That's our concern, that the land owner from Hong Kong, the industrialist from Ohio shows up at Ontario's doorstep and says: "I want to put in this multimillion-dollar development or industry. I want to know within two months what you think of it." We're concerned that the current process is starting to move in the direction of giving a quick response. We're concerned that Bill 163 is not going to assist with respect to that quick response.

**Mr Curling:** Thank you.

**The Vice-Chair:** The parliamentary assistant would like to respond very briefly to one of your concerns.

**Mr Pat Hayes (Essex-Kent):** In regard to the policies, really the intention of this government is to make the policies a lot clearer, which we feel we are doing. I think one of the problems—and I'm sure a few people have represented developers or investors—one of the frustrations I'm sure that you and they have run up against is the fact that you had to go to three or four, maybe even sometimes five different ministries, whatever, before maybe you were told, "No, you can't do this."

I think what's important about making these policies clearer and up front is that I'm sure this is what you would want, that developers would know up front whether their project would be able to go or not go, rather than lead a developer or an investor down the garden path only to find out six months or a year later that, "Sorry, it doesn't meet the criteria." We feel it's important to make these policies clearer and up front and I believe that's what we are doing here with this legislation.

**The Vice-Chair:** I hope that's been of some help. At this point, I would like to thank the Canadian Bar Association for its presentation—and the material you've left with us, the very detailed material.

**Mr Harbell:** Thank you very much.

**Mr Ellyn:** Thank you for the opportunity to make this submission.

#### URBAN DEVELOPMENT INSTITUTE

**The Vice-Chair:** I'd now like to call upon the Urban Development Institute, UDI, Mr Morley Kells, president, Ms Lucy Stocco, chair, and Mr Jack Winberg, past chair. Please come forward. Good to see you again. You have half an hour.

**Mr Morley Kells:** Thank you and good morning, members. Again it's a pleasure to be here on deliberations on Bill 163. We have, as you have mentioned, Lucy Stocco, who is chair of UDI, Jack Winberg, who is the past chair of UDI, and Sue Cumming, who has worked along with us in preparing our brief.

I would like to mention that we have a joint industry brief. We have been working right along with the Greater Toronto Home Builders' Association and today we'll be filing a joint task force brief, but we will leave the Greater Toronto Home Builders' Association to deliver its message tomorrow.

Just for the record, I would like to mention again that UDI is a non-profit organization comprising firms engaged in the development of lands and construction of residential, industrial and commercial buildings in the province of Ontario. Our membership also includes many firms that are engaged in different consulting practices that provide services to the land development and building industry. Jack will take it from here.

**Mr Jack Winberg:** Madam Chair and members of the committee, we thank you for the opportunity to be here today. As Morley has just indicated to you, we represent the Ontario chapter of the national organization of builders and developers across Canada. We're an industry that's very proud of what we've done in the past, providing shelter and offices and factories and shops and stores for really the human condition in Canada today, which boasts a standard of living that is second to none in the world.

I have a number of concerns that relate to the planning process and to the Planning Act. I can't second too greatly the comments that have been made by the group before us, that what we're really talking about is Ontario's economic competitiveness and its ability to respond in the global marketplace to the changes that happen in our world.

Planning is a human process. Planning is a process whereby values of different people with respect to the way they'd like to see their physical environment and their physical world be created come to be articulated, debated and ultimately resolved. You must look at the planning process not so much with respect to the substance that it creates at the end but the means by which the competing values are weighed and balanced and decisions are made. What was important in the 1950s is not the same as what is important in the 1990s, but essentially it's the process that allows the determination of what's important to come to the fore, be debated, be articulated and be resolved. That is what the planning process is all about.

#### 1010

We've said on many occasions, through the Sewell commission and through the others, that there's essentially nothing wrong with the act which says: "Come forward, make an application, have it circulated by all the parties, bring it before the public, get the public input and allow the people who are responsible"—primarily, and I agree, the local elected officials—"to make a decision on the merits; and if there's something wrong, if it doesn't conform with policy, if there's some mistake that is not in the interests of the province, then fine. Go to the OMB." That is the process of the Planning Act, and really we are very concerned that it not be dramatically interfered with as we go through the mid-1990s and try to articulate the environmental consciousness that's been present during that time period.

So, as you hear our submission, I really want to remind the committee that what you're dealing with is a human process, a process that's designed to help people through the physical manifestations or the physical utilization of their lands and buildings and structures and parks and trees, achieve their human aspirations, and they're going to change over time: The needs are going to change; the baby-boomers are going to age. We're going to have to be continually thinking and rethinking our society as it goes, and what we need is a process that allows that to happen in a proper, orderly and fair way. It is in that context that we ask that the Planning Act be considered and reviewed.

I want you to remember—and I don't know, when I hear some of the comments, as to what the little guys and women out there think about the planning process—that the development and building business really is like a manufacturer. We manufacture the houses and buildings and roads and parks that people live in and use and enjoy. If you look at the industry as a producer, we are already the most regulated industry in Canada and probably in the world. No other producer has to come to the public, has to come to the government at every stage in the production of its products.

Bill 163 and the other changes to the system that are proposed by this package are going to increase the regulation of the industry substantially. We want to be sure, if we're going to have more regulation, that it be regulation that adds value to the process and that will enhance and improve not only the planning process but Ontario's ability to compete on the world scale.

As builders and developers, our concerns with the Planning Act are that the process continue to work; that the process not only allow but encourage and facilitate the continued growth of the economy of Ontario; that the development and construction industry remain in a position to ensure Ontario remains an attractive place to come and invest, build plants, build offices, employ people and, in sum, create the wealth that is needed to sustain the standards of living that people in Ontario have come to enjoy.

I know the government wants this. I know, Mr Hayes, that your minister wants this. He wants to be able to go to Japan and say, "Come to Ontario and build a plant." When the minister says, "And we have a process there that accommodates you and will let you move towards a reasonable time frame of implementation," we want to be able to help the minister keep his promise. We are very concerned that the proposed changes to the legislation will not aid in that goal.

I say this for a number of reasons. For the planning process to work, it must be able to respond in a timely and efficient way. What that means essentially is that it's not enough to say: "We want to facilitate, we want to encourage people to come forward and tell the community every last detail about the plan up front. We want to be able to have alternative dispute resolution mechanisms. We want to be able to have a process where absolutely every single thing that could be considered is considered as early as possible in time."

That is all well and good and we support that in a

general way, but you can't design a system without a fail-safe. You can't design a system that doesn't contemplate the potential for abuse that may be presented in the system. You may have someone who's out there who has just a fundamental disagreement, will never come to ADR, or if he does will come to an alternative dispute resolution with no intention of ever compromising. If you design a system that allows that person to control the system, then you've designed a system that will fail. You've designed a system that will never come to an end and will never allow the determination of that plant to be debated and articulated and a decision made in a timely and a proper way.

That is why when you say, for example, "Take away the committee of adjustment, and take away the fail-safe that an expedited system now provides," it's not really a question of the committee of adjustment. What you're saying is you're going to have more zoning bylaws.

If people need the front steps on their house but their neighbour doesn't like it and council's too busy to deal with it or the person who's the neighbour has more weight on council than the person who needs steps, the person needs steps on his house. What you're doing by taking away the appeal to the committee of adjustment is saying: "Make a rezoning application, go through a year and a half of process and three reports and four public meetings, and then appeal to the OMB. Then you'll have your hearing and the board will decide whether it was a proper thing to have steps on this house." I mean, this is what we're talking about in a very micro way.

When I say a fail-safe system, I'm talking about on larger issues, and we come back to the point my friends made earlier about prematurity. I'm a developer. I make a determination that the marketplace needs a use. It needs some land to be developed. There are people who will buy it, there are people who will build plants on it, there are people who will employ people in it or there are people who will live in it or there are people who will shop in it. I've made that decision, and I think that's an important part of the economic functioning of the planning process.

I've got some potential problems. I've got people who are used to having a park beside them. They don't want to see my building. Right now, I know that if I have the right idea and it's the right thing for the time, eventually I'll get a hearing before the Ontario Municipal Board and I'll have the opportunity to present my case in a fair and impartial way. I will still prepare my plans, I will still meet with my neighbours, I will still go to public meetings, I will have a complete application, but at the end of the day I will know going in that I can go to the OMB.

One of the changes that concerns us the most is the fact that the new Planning Act will not give me that guarantee. If I make my official plan application under section 22 and I do not succeed at council, the regional council or the approving authority has the ability to say, "Your application is premature and you cannot go to the OMB." If you take that right away from me, as this legislation does, I'm not going to bother, and I may take my time and my efforts and go to another jurisdiction where I know I can be treated fairly.



Subclause 17(29)(a)(iv) is probably one of the most dangerous sections that this legislation contains. It is one section that will seriously undermine the competitiveness of Ontario as you move forward. It is a section that just simply provides no fail-safe. It's overkill in terms of trying to achieve that which the planning process—in terms of facilitation, in terms of trying to get people to talk and get people to alternative dispute resolve, that's all good and we support it. By the same token, we have to know that at the end of the day you can have an ultimate dispute resolution mechanism, an effective one, and if you take that out of the act, I can assure you that you are going to do more damage to the economy of Ontario than almost anything else I could imagine as far as the planning process is concerned.

The other major concern we have, really, with respect to the policy and the way in which policy is taken and considered in the statement comes back to the statement we made before that the act itself is not broken but the actors have not made it work, and this comes back to the questions relating to “shall be consistent with” and whether or not those words should be changed or whether “have regard to” should be left in the act.

1020

I guess perhaps a bit of history on this is required. The 1983 act put into place section 3, which allowed the promulgation of policy statements to which people had to have regard. In the 11 years that that section was outstanding, we got policy statements on wetlands, on floodplains, on aggregates and extraction, and finally, in 1987 or 1988, we got a policy statement on housing. We never had a policy statement on the environment, we never had a policy statement on natural resources, other than the aggregates, and lo and behold, when we come to the time to reform, the system is broken because the policies and the powers that were given to the provincial policymakers and the municipal decision-makers were never exercised.

With the greatest of respect, to the extent that policy statements were issued, they have been quite successful. No one has any doubts about whether you can build in a wetland or not. They have that today. Somebody coming to Ontario who buys a wetland will get a very fast answer from anyone in the industry who knows. “Here's the policy statement on wetlands. You can't build in class 1, 2 or 3.” It's very clear. If you get into grey areas, you can ask them questions and get things worked out.

Housing statements: You know what the objectives are. Yes, you may have difficulties finding locations or finding suitable spots for them, but the process is there and people take it very seriously.

Floodplains: Again, very clear.

The words “shall have regard to” in section 3 with respect to properly promulgated policy statements have worked very well.

Now all of a sudden we have both the policy being written and a determination to change the wording of the act as to how they're to be treated. I think it's not only unfair, in the sense that what you're saying really is that you don't have any trust and confidence in local govern-

ment—and if you're hearing from out in the other places where you've held your hearings the local area is upset about this, that's why. You're saying you don't trust us to honestly read your policies and apply them to our local circumstances, that somebody from Queen's Park has to decide that you've been consistent with something as opposed to taking it into account in a proper way.

I think with respect to “shall be consistent with,” and I know we are joined with respect to this concern by AMO, the Association of Municipalities of Ontario, the regional planning commissioners, the CBAO, I believe the greater Toronto mayors—you'll be hearing from them all, and they'll all be telling you that “have regard to” is a sufficient means for dealing with the policy statements, particularly given the tightness of the wording of the policy statements. In the event that you feel some change has to be made, I think if you said, “shall be consistent with the intent and spirit of the policy statements,” or “the general intent of the policy statements,” you will achieve some modicum of compromise on that issue.

The other point that we think is critical is with respect to the true recognition of the economic importance and the impact of the planning process. We've made many suggestions at the Sewell commission and since that the purposes of planning should much more clearly articulate or acknowledge the impact the planning process has on the economy of Ontario, and we've asked for changes to the purpose-of-planning section to reflect that.

With respect to some of the streamlining issues, you'll see that in our brief we have asked for some consideration to the section regarding referral rights to the OMB that I've referred to. We've also suggested that rather than 180 days for a hearing to be held, it be held in 90 days. Today in the province, most municipalities, certainly most responsible municipalities, call a public meeting very early in the planning process, before the planners are writing all kinds of reports, to see what the public temperature is with respect to an application. That often happens in 30 or 60 days. Therefore, we ask that under section 22, paragraph 1, the 180 days be changed to 90 for the public hearing and that we get a decision in 180 days, because I can tell you that as soon as you put down what the statutory minimum is, I can assure you that's what it's going to become. All those municipalities that have busy dockets and planning staffs that have to juggle their budgets are going to say, “Listen, the legislation said I don't have to have this hearing for 180 days, so why should I have it in 60?” That's one of the little changes that's going to be made. It's made in the aid of facilitating resolution and accommodating discussion. By the same token, it's very likely to end up in a lengthened process.

The other comment we make with respect to the detailed planning issues—

**The Chair (Mr Rosario Marchese):** Mr Winberg, I hate to interrupt, but if you have much more to say, there won't be any time for questions. In fact, as it is, there would only be time for one question per caucus.

**Mr Winberg:** I've been here for 15 minutes.

**The Chair:** Sorry. You started at 1004, so we're—

**Mr Winberg:** No, I started at 1010.

**The Chair:** You have 1010?

**Mr Winberg:** I put it on myself so that I knew I would be—

**Interjection:** We came on time.

**Mr Curling:** That's the trouble with omnibus bills, you see.

**Mr Winberg:** I started at 1010, sir. Thank you.

I've hit the essential ones. The one comment I would like to make with respect to the complete application—

**Mr Anthony Perruzza (Downsview):** On a point of order, Mr Chairman: I think we're going to need some consensus about how we're going to proceed with this, because we have a number of people coming later today. Do we give them a specific time?

**Mr Winberg:** I'll finish in two.

**The Chair:** I'm cutting off this session in approximately six minutes and a half, so whatever time he will take, that's when we end up.

**Mr Perruzza:** So 1035—

**The Chair:** That's right.

**Mr Winberg:** Just to the last point then with respect to the development industry's willingness and desire to respond to environmental concerns, I don't want anyone to think this industry is not responsible. We are. We believe that the good husbanding of our natural resources is in everybody's interest. We think that we've been the leaders in the development of the technology to assist us in understanding our environment and that in great respect development enhances and improves the environment from conditions which existed previous to it. We want there to be a proper balance, however, to ensuring that the Ontario economy be allowed to grow and prosper and at the same time satisfy the concerns of future generations with respect to our natural heritage.

**The Chair:** Thank you, Mr Winberg. Two minutes per caucus then.

**Ms Haeck:** I wanted to raise with you your comments on page 5, section 3, "shall be consistent with." One of the concerns of my residents, my constituents, and obviously others who have spoken to us is the issue of their sense that the whole process, whether it's the Food Land Guidelines or a number of other things, in fact is not necessarily as strict as you have commented and that in fact you could in some instances drive a Mack truck through it. There is no floor or ceiling in this regard, so there are those who feel that "shall be consistent with" should in fact read "shall conform to," which would in fact make it a much stronger statement than "shall be consistent with." I would be interested in your remarks.

**Mr Winberg:** As far as conformity or consistency, I think the issue is, is whatever word we choose going to require slavish adherence in the sense that the opportunity to arrive at the appropriate local decision on a matter will not be possible?

When you say that your constituents think Mack trucks have been driven through the Food Land Guidelines, I can say to you that it may well be that they have more severances in rural areas than you've wanted. But that's

not because the policy was wrong or the act was wrong, it was because people who had the responsibility to make a decision decided they wanted to do certain things to meet that community need. If you don't like it, you can change the official plan, as the government did in Grey-Bruce, for example.

**1030**

But there are no examples, or very few examples, certainly in my experience, which is quite extensive, where in the greater Toronto area, where this policy will have the greatest impact, there has been any abuse of those policies and of that wording. To change the act because you have perhaps in some cases a bit of irresponsibility or a lack of understanding, to throw out the entire process and to throw out the opportunities that are presented by a balanced decision-making process under a "have regard to" regime is a grave error.

**Mr Grandmaître:** Thank you for a very complete submission. I think this is the first one in the last two weeks that really goes through Bill 163—well, the planning part anyway—so precisely.

The problem with Bill 163, or one of the problems with Bill 163, being an omnibus bill, is that this committee has no regulations in front of us. We have a bill with no regulations. So what we're doing, or have been doing for the last two weeks, is imagining things: It could happen; it won't happen; maybe. And it makes it very difficult for people like you and other groups who appeared before this committee to make a just analysis of this bill.

You've appeared before the commission, and you were promised, if I'm not mistaken, that regulations would be introduced with this bill at the time this committee would evaluate it. Am I right or wrong?

**Mr Winberg:** That has been the understanding upon which a substantial amount of our participation has been based.

**Mr Grandmaître:** That we would have regulations.

**Mr Winberg:** That we would have everything, that the entire package would be assembled and before us for a considerable period of time in order to allow it to be digested. In fact, as late as last week I made a submission to the government that in order to keep that promise, we should stop talking about January 1 for the implementation of this program and that June 30 is probably the earliest date you could possibly have a new system in place with people understanding at all what the rules are. The last thing I want to have is a situation where we do a whole pile of drafting in a very quick time and it isn't right. What we're dealing with is so important that it is worth whatever additional reasonable amount of time, given the political will to make a change, that it be right the first time and that we have a package that fits together and works together and that we understand.

**Mr Grandmaître:** Maybe we can ask the parliamentary assistant if the new regulations will permit you to have an input in those regulations before being finally accepted by this committee.

**The Chair:** Mr Grandmaître, we're going to three minutes right now.



**Mr Grandmaître:** Can we ask the parliamentary assistant, Mr Chair?

**Mr Curling:** When the regulations will be ready actually.

**Mr Grandmaître:** And will these groups have an opportunity to respond?

**The Chair:** Mr McKinstry, this question has been asked many a time. Perhaps you can provide an answer.

**Mr Philip McKinstry:** Mr Winberg is part of a task force which is being chaired by Dale Martin, the provincial facilitator, and the task force is developing in a consultative manner the guidelines for the policy statements and it will also look at the regulations. So we are developing them and they will be done in an open manner.

**Mr Grandmaître:** Will they have a chance, an opportunity, to respond?

**Mr McKinstry:** Yes, they will have an opportunity to respond.

**The Chair:** Mr McLean.

**Mr McLean:** The Hansard will show that I asked for them the very first day the minister was here, both the regulations and the amendments, and there was no forthcoming with either of them. We got the same statement as we got today, "We're working on them."

I want to ask you a question with regard to right of referral. In your brief you indicate on page 7:

"There are no time limits on when the minister must refer. The appellant has faith in the Ontario Municipal Board as an independent adjudicator. The new act reduces these rights and infringes on the powers of the board to hear matters creating confusion about the conditions under which an approval authority can decide whether to grant a referral. In the existing act, this is not an option."

My understanding of the act is that the minister can refer them pretty near any time he wants, up until the final approval of the subdivision, after the developer and the municipality have gone through a whole process; that he can refer at any time. Is that your understanding of it?

**Mr Winberg:** Yes. I think the comment in the brief was directed towards the referral of an official plan amendment. Today if you ask for a referral from the town or the region, the minister can sit with it for an indefinite period of time, but he must generally refer it unless he determines that it's frivolous or vexatious.

Under the new act it's not the minister who does the referring any more, unless he's taken back the power from the municipality, but now the municipality has 150 days in which to make a decision. This is where the ability to decide that something is premature comes in. We're concerned that essentially the right to refer will be taken away, because when you run into a situation that's hot and you're coming up to an election, the municipality is just going to say, "It's premature. We'll deal with it after the election," and that application is stopped dead in its tracks.

With respect to subdivisions, the minister, and under the new act the approval authority, has the right to

change the draft conditions of approval at any time prior to final registration of the plan. This is a power that essentially exists today. I think ministerial restraint has allowed that power to be there and not be abused, in the sense that it's used only in extreme circumstances where something has changed or something has been terribly missed.

**Mr McLean:** Your group has confirmed what we've been hearing very strongly across the province with regard to this bill. We hope there will be some major amendments, if that would even solve it, which I doubt.

**The Chair:** I want to thank the Urban Development Institute for coming and for communicating your concerns to this committee.

**Mr Curling:** And to Morley Kells too.

**Mr Kells:** What's that, Al?

**Mr Curling:** It's good to see you.

**Mr Kells:** It's a pleasure to be here.

**Mr Winberg:** Thank you, Mr Chair, members of the committee. We appreciate your attention.

#### METROPOLITAN TORONTO SCHOOL BOARD

**The Chair:** We invite the Metropolitan Toronto School Board, Mr Brian Kelsey, legal counsel. Ms Vanstone is not here.

**Mr Brian Kelsey:** No. She apologizes for her absence. She is at the moment with the Minister of Education and Training at a press conference announcing the government initiatives with respect to aid to expelled students. She apologizes for her absence and hopes that my presence is sufficient compensation.

**The Chair:** Of course. She was an old colleague; that's why I raised the comment. But that's all right.

**Mr Kelsey:** You have before you, Mr Chairman, members, the brief that's been prepared and submitted on behalf of the Metropolitan Toronto School Board, and you can take it that it has the support of the area boards, all the public boards in Metropolitan Toronto. I'm not going to deal with what it contains in detail. You'll notice that there are some 17 items of detail in the legislation that are dealt with in the brief. It's set up fairly clearly so that the particular clause is referred to, what it contains, what the previous school board position in relation to the earlier proposed legislation was, and then followed by the recommendation.

The only matters that I want to deal with or make submissions on in the short time available now are with respect to the provisions with regard to disclosure statements and the powers of the commissioner. I might say that all the trustees support the general intent of the legislation, provided that one understands that the overall intention of the legislation is disinterested decisions. The legislation must, I suggest, be looked at in that overall context because that requires a balancing of the need for public awareness of what might influence trustees in their decisions and, on the other hand, the legitimate interest that trustees have in privacy with regard to financial information.

On the specific provisions with regard to disclosure statements, I would ask the members these questions:

First of all, are open-ended disclosure statements of all assets and income, which are allowed under this legislation, required for trustees of school boards? Are not trustees of school boards in a somewhat different position than members of municipal councils?

1040

The second question is, should the content of disclosure statements be left solely to the executive? Isn't it necessary, as in the freedom of information and privacy legislation, that the legislation itself address itself to the principles which are required to be observed in order that the purpose of the legislation can be carried out, rather than, as it would appear from this legislation, as some people might take it, the attitude has been, "Well, if we provide everyone to provide all information, then we're covered"? That to me, with respect, seems a somewhat simplistic approach. You have to balance on the one side the desire for full disclosure where necessary, and on the other hand the need to protect privacy where necessary.

The third question is, is it necessary to have automatic public access to the information provided? I would suggest that there's a difference between, on the one hand, members of the municipal councils who are dealing with property issues as a matter of course, and school board trustees on the other. The school board trustees deal, on the whole, to a modest extent with property issues. They also are dealing of course with putting out contracts to independent suppliers. One may ask, have the conflict-of-interest rules been insufficient to ensure that school board decisions are made on the basis of the public rather than the private interest? Before requiring complete disclosure, as this legislation does, of all income and assets, one has to ask the question, has there been discovered in the province an evil that is necessary to get rid of? To get rid of that evil, is it necessary to require every trustee theoretically, as matters stand, to disclose every financial interest and source of income that the trustee has, without regard to jurisdiction?

One might, as a matter of principle, for example, say that only property interests within the jurisdiction of that trustee are relevant to the trustee's decisions. So anyone can say that only property within the province is relevant to the trustee's decisions. As it stands, it's left to the executive, and the draft statement of financial information which has been produced would require disclosure of all assets and all income, wherever they are.

I would suggest that what the legislation requires, as the freedom of information and privacy legislation does, is an indication of the principles upon which the government conceives it necessary for trustees to disclose financial information, what financial information needs to be disclosed to ensure decisions of trustees are made in a disinterested fashion, and then a broad delegation to the cabinet to decide exactly what is to be disclosed without any guidance given either to the public or to the cabinet as to the principles upon which that discretion should be exercised. It's our submission that the public is entitled in the legislation to an indication of the principles upon which the government and the Legislature are acting in asking that all trustees disclose all their assets and all their income.

The other aspect is, why should this information, or the information that is determined to be necessary by the Legislature rather than by the government, have to become automatically public? This kind of information under the freedom of information legislation would not; in fact, it would be protected as *prima facie* private information not to be divulged, and then the power is given to the commissioner under that legislation to decide in any particular case whether the public interest outweighs the need for the protection of private information. In other words, there's a balancing of interests. One might ask whether this legislation is more aptly entitled an absolute disclosure of interests rather than a balanced disclosure of interests, whether adequate attention has been paid to the need to protect privacy without—there are circumstances where that privacy can be protected and the public interest is not harmed. One can imagine, particularly I think outside Metropolitan Toronto, that there would be a lot of people in smaller communities who would be very interested in finding out what the assets and incomes of trustees were, not for any public purpose, but for the satisfaction of their own private interests.

One way, I suggest, of dealing with that problem would be to have the disclosure initially, as it is under the freedom of information legislation, disclosed to the commissioner appointed under this legislation, and then that a decision be made by him in the particular case as to whether it is necessary to disclose that information. So rather than, as it's presently proposed, having the disclosure, if it is deemed necessary for trustees, automatically a matter of public record, initially it becomes a matter of record within the office of the commissioner. Then, upon application by a particular individual, the way the freedom of information commissioner does, a decision is made in each case based upon his knowledge and an investigation, which I'll mention in a minute, as to whether it's necessary in the public interest to divulge that information in the particular instance. There is, as I say, a model already set up under the freedom of information legislation for that kind of balancing of interests between the need of the public to know and the need of the individual to protect legitimately private interests in particular cases.

The position on that issue, in summary, first of all is that it's highly questionable as to whether it's necessary to include school trustees in the financial disclosure statement provisions; that, if it is necessary, the legislation itself should set out at least the type of information or the principles upon which what kind of information needs to be disclosed should be set out; and, thirdly, that the information should not automatically be made public, but that decisions be made in particular cases, balancing the interests.

The only guidance at the moment—for example, in section 3 there's a whole list of types of interests that are not regarded as pecuniary interests for the purpose of the legislation. One of them, I think the last one under (m), is information or an interest that is remote or insignificant, which, although broad, at least is some kind of guidance to indicate whether the interest is pecuniary or



not. In relation to the financial disclosure statements, there's no kind of guidance of that sort at all.

The only other thing I wanted to mention at this stage is the functions of the commissioner, so that the commissioner at least be in a situation where the various functions that he carries out be consistent. It's suggested that there be no power under the legislation to give him additional duties, because already at the moment he or she would be obliged to provide guidelines to trustees as to what constitutes a conflict of interest. The commissioner then has an investigative function, then has a function exercising the powers under part II of the Public Inquiries Act which would give the commissioner the right to subpoena and examine under oath, and then another aspect, the right to act as prosecutor and to bring proceedings.

As indicated in the brief, there is a large question as to whether the extensive powers given the commissioner in investigation—the right to commence proceedings without acting on a sworn declaration of a belief of a violation of the act and the right to see all the proceedings of institutions and the papers of individuals without going to an independent body to swear out a warrant—may well be in breach of the information and warrant provisions of the charter that examination should be given to that aspect to make sure, as I say, that the functions and duties of the commissioner are all consistent with each other, and then to bring into harmony with that, what I just mentioned a little earlier, that the commissioner should have the kind of intervening role between the public and the individual to make sure the information which is made public is in fact—that decisions are made in the public interest.

1050

**The Chair:** Thank you, Mr Kelsey. Unfortunately, we ran out of time and there won't be sufficient time to ask you questions, so we thank you. Ms Vanstone, welcome.

**Ms Anne Vanstone:** I am sorry I'm late.

**The Chair:** I understand. He mentioned where you were. We thank you for coming and thank you for participating in these hearings.

**Mr Kelsey:** Thank you, Mr Chairman.

*Interjection.*

**The Chair:** I'm sorry.

**Mr Curling:** I didn't ask about going on.

**The Chair:** No, but—Mr Curling, I'm sorry.

**Mr Curling:** What do you want?

**The Chair:** If we go on, we will run way over time.

**Mr Curling:** I didn't ask you what—I didn't ask you a thing yet. Why are you objecting to me even—

**The Chair:** Because already this has taken a great deal of time.

**Mr Curling:** Because you have not allowed me to say what I have to say. Mr Chairman, I just wondered why the board only had 15 minutes and others had half an hour.

**The Chair:** They weren't scheduled to be heard. There was a cancellation. That's why they were able to fit into that 15-minute slot.

**Mr Curling:** That's all I asked.

**The Chair:** That's what we did. Thank you, Mr Curling.

**Mr Kelsey:** We were offered 15 minutes on Friday and we took what was available.

**The Chair:** Thank you, Mr Kelsey. Thank you, Ms Vanstone.

#### WINCH PLANNING AND DEVELOPMENT SERVICES

**The Chair:** We invite Mr Melvin Winch. Welcome. Please begin any time you're ready.

**Mr Melvin Winch:** I want to thank the committee for the opportunity of commenting on Bill 163. My remarks will be directed towards one particular section, namely the approval of what is commonly known as "minor variances." I noticed, of course, that the previous speaker this morning did comment on this matter somewhat in general terms. I want to focus in on some detail. I think it's quite important.

If, as I proceed through my brief, my comments and suggestions appear to be self-serving, your impression is correct. A substantial component of my planning practice is assisting with committee of adjustment applications and providing expert witness testimony on appeals before the Ontario Municipal Board. My remarks to this committee are based not only on this direct and substantial experience, but also as an individual who has worked in the public sector in senior roles for several municipalities.

Section 25 of the bill repeals the current section of the Planning Act dealing with minor variance applications. The new provisions would permit a council to select one of the following three options for the approval of minor variance applications.

Option 1: Council has the authority to approve applications. There would be no appeal, however, from council decisions.

Option 2: Council may delegate its authority to a committee of council or an appointed official. There would be no appeals from decisions under these arrangements as well.

Option 3: Council may delegate its authority to a committee of adjustment consisting of council members and citizen members or of citizen members only. If the committee consists of only citizen members, council may decide to review committee decisions.

Currently, decisions of the committee of adjustment can be appealed to the Ontario Municipal Board. With the new legislation, the right of appeal will be denied to applicants and objectors. It will be replaced with an optional "council review" which council may decide to apply under option 3 only, and only if the committee of adjustment consists of all citizen appointees. Very, very restrictive.

The new legislation dealing with minor variances and other changes to the Planning Act originated with the Sewell commission. The commission recommended that appeals of minor variance decisions be heard by the municipal council, but this has been watered down in Bill 163 to an optional review that might occur in limited situations.

What is the importance of the current appeal procedure? The proposal to do away with appeals before the OMB and replace them with an optional but limited review of decisions by municipal council is, in my opinion, unsound for a number of reasons.

Firstly, the significance of minor variances: The Sewell commission states that minor variances deal with "zoning detail" and the issues are "too insignificant" to be dealt with by a provincial appeal body.

The term "minor variances," as other speakers have indicated earlier, is not defined in the act, but a successful application is required to meet four tests set out in the current legislation. In the final analysis, it is judgemental on the part of a committee of adjustment or municipal board as to whether the tests are met.

The granting or refusal of a variance to alter, for example, the height, size or placement of a building can be quite significant to both the proponent and community in which the proposed development is situated. While changes in use are usually accomplished through an application to amend the zoning bylaw, they can also be facilitated through the committee of adjustment authority contained in section 45 of the act.

There are numerous examples of committees granting substantial departures from comprehensive zoning bylaws or site-specific bylaws that were carefully formulated after consultation with the public. This is often done, I might add, with the blessing of the local councillor but without the backup staff reports and without full community participation. With the new procedure, the community loses its existing right of appeal.

The Sewell commission and the new legislation have understated the significance of the authority given to committees of adjustment. It is important that a sound approval and appeal process be in place so that all of the relevant issues will be thoroughly considered and a fair and objective decision be reached. It is also important that the process be perceived as fair to all the interests.

The second reason: Committees of adjustment conduct limited hearings at the present time.

While committees of adjustment are governed by the Statutory Powers Procedure Act, hearings tend to be somewhat informal and limited in time. I have never seen an oath administered, I have never seen expert witness evidence led by counsel, nor cross-examination permitted.

Committee members are lobbied, particularly by council members, and frequently meet before a hearing is held and arrive at an unofficial decision before hearing all the parties. It is not unheard of for applicants or opponents to say they are going through the motions and will have their day in court at the OMB. Under such circumstances, the appeal procedure must not be eliminated.

The third reason: Municipal councils are not appropriate appeal bodies. I think a number of members of this committee have served in local council positions and, hopefully, will attest to this as well. The municipal council is not well suited to consider minor variance applications or appeals. Councils, for the most part, have legislative and administrative functions to perform, which are based on perceived political mandates.

Members of council do not have the time, interest, necessary skills or, most important, the objectivity to deal with appeals of various decisions. It is one thing for the council to hold a public hearing before legislating on a planning matter. It is entirely different, however, to expect the council to act in a quasi-judicial manner, which is expected in matters of appeal.

Elected members of federal, provincial and municipal legislative bodies expect to be lobbied by their constituents and other interest groups. While tradition and law dictate that the courts and tribunals, such as the Ontario Municipal Board, are not to be influenced prior to a hearing being held, it will be difficult, if not impossible, for councillors to avoid being lobbied and coming to a conclusion on a minor variance matter before it is heard.

Not only is the appeal process less meaningful with the new legislation but it is solely at the option of the council as to whether it chooses to review committee of adjustment decisions. Where variances are considered by the council or delegated to a committee of council or an appointed official or to a committee of adjustment with at least one member of council, the review option is not available.

Part or all of a committee of adjustment can consist of council members. It is not uncommon for council members, individually or collectively, to send a recommendation to, appear as a deputant before, or appeal a decision of the committee of adjustment. In such circumstances in particular, it is not possible for a council to be objective and be expected to deal fairly with such appeals. Council should not be judging the decisions of those to whom it delegated its authority.

The fourth reason deals with concurrent severance applications, which also accompany, in many cases, variance applications.

Many minor variance applications involve a concurrent application to sever property into two or more parcels. While appeals of minor variances will no longer be heard by the municipal board, the board will continue to hear appeals relating to severances or what are known as consents. A situation whereby minor variance decisions may not be appealed or can only be reviewed by council but the severance decision can be appealed and heard by the OMB is confusing, inefficient and wasteful of resources. The same development proposal can lead to two different results.

#### 1100

Fifth: The removal of appeals will increase the number of rezoning applications. I will just touch briefly upon what the speakers mentioned this morning.

If a proponent receives a negative decision from a council, committee of council, appointed official or committee of adjustment, and if his review by council is unsuccessful, he still has the option of submitting a rezoning application and having the appeal ultimately heard by the municipal board.

Removing the right of appeal to the OMB for minor variance applications will likely increase the number of applications and appeals. This is counterproductive and is not the intent of the new legislation. On the other hand,



if an opponent of a proposal is not able to convince the decision-maker of his position, he cannot take the matter to the OMB. This, I submit, is fundamentally unfair.

The sixth and final reason: Fairness should not be sacrificed in the name of expediency. The Sewell commission's recommendations, which are more or less reflected in the new legislation, have been driven to a very large degree by the commission's other recommendations, which would see the municipal board take on additional responsibilities. There was also a legitimate concern with the excessive time it takes for appeals to be heard. The appeal process should be concluded in a considerably shorter period of time, and there can be no doubt that the OMB is overburdened. Nevertheless, minor variances should not be trivialized, and removing appeals from the jurisdiction of the board is not the answer.

In conclusion, minor variances and minor variance appeals should be continued, and they deserve to be treated with the same degree of importance and impartiality as do appeals of official plan, zoning, subdivision, severance, and site control matters. This should go hand in hand with efforts to reduce the number of appeals by increased mediation and by greater screening of appeals, as recommended by the commission and provided for in Bill 163, and by arranging for hearings and explaining decisions within reasonable time frames.

If I may, the suggestion put forward by the Canadian Bar Association whereby there could be a procedure built in for applicants or opponents to request leave to appeal should seriously be considered by the committee and by the Legislature.

This can best be accomplished by strengthening the resources of the OMB. The highly politicized environment of a municipal council is not an appropriate forum to consider appeals. The little guy or little woman has to be protected.

I hope these comments will prove useful to the committee's deliberations and that the appropriate changes to Bill 163 will be made before third reading. Again I want to thank the committee for its attention.

**The Chair:** Thank you, Mr Winch, for taking the time to come to this committee and to communicate your concerns to us. Unfortunately, there's not enough time for questions, because once we get into questions we would then be late for all the others. We appreciate your coming and we appreciate your participation.

CITY OF NORTH YORK

**The Chair:** We invite the city of North York, Mayor Mel Lastman. Welcome. You have half an hour for your presentation. Please leave as much time as you can for questions. We've had a difficult time this morning having the members ask questions because we're running out of time, so if you can, leave as much time as you can.

**Mr Mel Lastman:** I would like to thank you very much for having me. This is probably the second time I've appeared before a committee here, and both times it's been the same committee. So thank you very much. This time I brought my glasses. Last time, I had to borrow somebody's.

North York supports the proposed changes to the

Planning Act. Giving the task of approving local official plans and official plan amendments to the local area municipalities is still the way to go in Metropolitan Toronto. We have the skills and the staff to do the best planning. We know and understand the needs of our communities. We know at first hand what will benefit our existing neighbourhoods.

North York is noted for consulting our communities extensively throughout the planning process to protect stable residential communities. We have begun to encourage even more community participation by involving citizens very early in the process in a meaningful dialogue.

Metro is too big a bureaucracy and too far removed from our communities to do the job properly. There is no accountability at Metro. A Metro councillor from Scarborough or Etobicoke should not be making planning decisions for North York, just as a North York Metro councillor would not care what happens in Scarborough or Etobicoke. They don't have the time and don't take the time to find out, and what happens is that they say, "Well, what do you want me to do?" They ask a North York representative who isn't even involved in the planning, or Etobicoke or Scarborough or whatever, and therefore a lot of things get derailed.

Unless you have party politics at the Metro level—which I am not encouraging, but I'm telling you, unless you have party politics at the Metro level—where there would at least be some accountability to the taxpayers, don't make this move. It's a very dangerous and bad move to make. If the province wants to streamline the planning process for efficiency, keep Metro out of it. In our experience, we found that Metro complicates the process and in fact is often counterproductive.

I foresee real problems if Metro has more say over local planning issues: duplication of public meetings; overlapping functions; community confusion about who is in control of planning; Metro undermining city agreements; delays, after decisions have been made and things are well on their way, due to new rounds of extra meetings and negotiations.

Here are a few examples of Metro slowing down the approval process and bogging it down needlessly with bureaucratic red tape and delays.

Metro council delayed our important Bridgehome 2000 development project for six months, for no good reason, even though the Metro staff were completely involved in the planning right from the start. Metro staff supported the North York decision, yet some councillors still wanted to hold public meetings after North York had approved the development. North York looked after every one of Metro's concerns, as well as the city of York's.

For example, here are some of the things we put into the agreement. Never has an agreement been written with so many things in it, and yet Metro held it up for six months.

—Metro must be satisfied that road improvements address all their concerns, including new signal lights, before moving to phase 2.

—The developer must do road improvements to

Trethewey Drive, Black Creek Drive, and other intersection improvements as identified by Metro.

—Before moving to phase 2, Metro council must be satisfied that there is sufficient sewer capacity.

—Before moving to phase 2, the city of York and Metro have to be satisfied that there are no traffic impacts on the surrounding neighbourhoods.

—All enforcement conditions on the site have to be clean before anything gets developed.

—Metro police will be asked to comment on the site plan to ensure that safety and security are satisfied.

—Schools will not be built next to the railway tracks or next to the industrial lands.

—The commercial and industrial portions of development that will create jobs will be developed within a reasonable period of time.

—If, for some reason, future phases cannot proceed, council may zone for a 20-unit-per-acre town house development.

Everything was put in there to protect Metro and the city of York, yet Metro found it necessary to delay this for six months, for no reason, no good reason at all. North York had dealt with the application for two and a half years.

Many, many people came out to these public hearings. They were concerned. North York held 26 meetings with ratepayers addressing ratepayer concerns. There were two public meetings at North York council, one meeting at our planning advisory committee, six developer meetings at our planning advisory committee, with ratepayers invited, there were four open houses with over 4,000 notices sent out, plus nine staff technical meetings.

After all this, Metro began demanding a public meeting, and for what reason? Because two Metro councillors had their noses out of joint. This was a frivolous and irresponsible delay—the staff were fully supportive of this entire process North York had gone through and everything that was in there—and a ridiculous notion, given that Metro council doesn't hold public hearings.

By the way, I pointed out to them as well that there would be only three people opposing at the OMB, and only one was a private citizen. This is a major, major development, on which we aired out all the concerns and worked with the ratepayers and everybody involved, including Metro and the city of York, and only three people were going to oppose it and only one was a ratepayer, a private citizen.

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Metro council also delayed for eight months our plan to revitalize our dormant industrial areas with modest office uses, after two years of hard work. That's OPA 369, which you passed without any problems. During this time, many more industries closed up and moved away, leaving many more empty buildings. Many workers found themselves without jobs because of this delay.

Metro stalled our agreement for advertising in transit shelters, leading to delays in getting new transit shelters in place, because they thought there was a gold mine hidden somewhere there.

Metro advanced the tax levy due date, which cost North York \$2.5 million and forced us to borrow \$100 million out of our reserves to cover property tax payments that had not been received. The point I'm making here is that they did this without consultation, and this was the beginning of Metro not consulting with the area municipalities or working with the area municipalities.

Here is one more recent example of Metro meddling in local issues and abusing its powers. Just recently, in fact just a week ago—well, we received a letter a week ago—a couple of months ago we approved a three-storey building of 34 town houses and 16 apartment units at Sheppard West and Cocksfield, near the Bathurst area. We had two public hearings at two council meetings and we spent a great deal of time working to satisfy the area residents. They had concerns about on-street parking, vagrants and vandals, so at the request of the local ratepayers, council decided not to have a pedestrian walkway from the local street, and the ratepayers were completely satisfied—completely. The development fit our secondary plan. The ratepayers and developer both liked it.

As always, Metro had an opportunity to comment on the application, and they did so. Metro staff wanted the walkway included, but North York council sided with the residents and deleted it from the plan. Then we received a disturbing letter from Metro planning implying that if we did not open the walkway, Metro would withhold other approvals; there's a copy of this letter attached, if you like. The local residents told us repeatedly that they did not want this walkway, but Metro staff appeared to take a tantrum because they did not get their own way. The only outstanding approval for this development is the site plan, which Metro has no role in whatsoever, but there are permits and licences requiring Metro's rubber stamp which they imply that they may withhold.

To hold up an application unless we agree with Metro staff on a relatively minor point is just short of extortion. If an issue did not fall under federal jurisdiction, how would any of you like it if your approved plans were endangered by some bureaucrat at the federal level?

That is not reason enough to hold up a development that everyone is happy with, but it is a good enough reason to seriously question Metro's involvement in our planning process.

North York is committed to action, not obstacles. North York is committed to consultation, not confrontation.

In May 1994 North York council unanimously adopted a motion that I put forward to have even greater citizen involvement in the planning process. This will not be achieved if North York citizens have to go all the way down to John Street in the city of Toronto for a public meeting. Citizen input would most certainly suffer, contrary to North York's wish.

Again I repeat, North York council holds public hearings on all planning items in our council chamber, with all members of council present just about all the time. This will never happen at Metro council. Metro council cannot possibly hold public hearings on all planning matters with all members present, and this



would frustrate our ratepayers, who are accustomed to and appreciate North York's open approach. If Metro council held a public hearing for all six municipalities, they couldn't get anything else done. And they will never hold public hearings at their council chamber.

Our North York residents have participated in the development of some very significant secondary plans, such as—well, Anthony Perruzza would know all about it—our York University, Bridgehome, and the uptown and the south downtown.

The uptown for Yonge Street: We met with the ratepayers for over three years until we finally came up with something we could introduce to council. The secondary plan for the downtown, that took over two years, meeting constantly and getting ideas from them. This would never, never happen at Metro.

Ratepayer involvement in planning was the cornerstone of building our downtown. Their input not only reduced the amount of conflict but strengthened our original plans. As I said, this could never happen at Metro if they were involved. Metro wants to know why they are being treated differently from other regional municipalities; well, Metro is different than most other regional municipalities. Most of the regional municipalities don't have planning departments as well-staffed as ours who have been working with our ratepayers for many years, nor do most of the other regional towns and villages have the resources that we have in North York to do the job as well as we do. I know I can say the same for the other Metro municipalities.

I urge you to support the changes to the Planning Act, because if you don't support them, you are just going to destroy what is working well now. And if it works, why ruin it?

I have with me today as well—I want to thank you for listening to me—Paula Dill, who is our new planning commissioner, and George Dixon, our solicitor. If there are any questions, we'll be happy to answer them.

**The Chair:** There is time for questions, so we'll begin with Mr Curling, approximately four minutes and a half.

**Mr Curling:** Thanks again, Mayor Lastman, for your presentation. You're always forthright and direct. You mentioned here the dictation of Metro which more or less intervenes in some of the plans that you have made after you've done all of your public consultation.

The concern that we're hearing outside too—and I ask you to go a little bit more corporate in some of your comments here—is that the policy and the legislation is a top-down situation where there is a dictation by the provincial government to adhere to their policy. Therefore, that's a bit of interference too. It has no community input that they can determine their own destiny, because they know exactly what's going on within their community. They are pretty concerned about that.

The other part is that most of the directions will be left to regulations which they haven't got either. They're also concerned that they don't know what they are really doing unless they have seen the regulation. In the meantime the policy will be dictated and in the meantime the

policy here cannot be argued on or even changed. I just wondered if you could comment there on those two points.

**Mr Lastman:** Alvin, are you referring to whether we like what the province is doing in handling it versus—

**Mr Curling:** Yes.

**Mr Lastman:** Okay. We'd rather do it ourselves. But if we have a choice between the province and Metro, we'd rather have the province do it the way it's being done right now, because of the delays. We have to get it done, your law says, within six months. It takes the province sometimes eight months because of the backlog. But anytime, anything, rather than having Metro do it, because we know what the heck this is all about and the frustration that we're having. If there are no objections, why not just leave it with the municipality? Anything is better than having Metro do it.

**Mr Curling:** What I'm hearing too is that poor administrations now will require legislation in order for them to carry it out. In other words, you said to go on, proceed with this, support this legislation here because you want to get on with what you have to do. Isn't it because many of the government levels have not carried out their jobs efficiently so we need legislation to dictate to them, to force them to do this, is what you are saying?

*Interjections.*

**The Chair:** No. Mr Lastman is the one that's—

**Mr Lastman:** Paul, maybe you can answer that—or George, maybe you can respond to that better than I can.

**The Chair:** It's a political question actually.

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**Mr Curling:** This is not a political question.

**Mr Lastman:** I'm looking for all your support; I'm not just looking—I can't get involved in this.

**Mr Curling:** What you're saying here is that Metro holds up your plan and the fact is that they're saying, "They're holding up our plan." The legislation will put time frames in and say you must meet by that. If we have those in, you cannot play politics with it, is what you're saying.

**Mr Lastman:** That's right. The two people, the two Metro councillors who held it up and wanted the public hearing, both voted for it. I'm sorry; I shouldn't say that. Both did not oppose it. One voted for it and the other one declared a conflict of interest. He held it up at the committee level and then declared a conflict of interest at the council because the law says now you can do that.

**Mr Curling:** So if there is a legislation to say you must do it within that time, you'd have to do it.

**Mr Lastman:** But what good is that if you're undoing the agreement that we've already got in place? You should see the things we've got for the community; it's unbelievable the things, you know. There's a 10-acre park; a 20,000-square-foot community centre; four acres set aside for two schools in the park; a total cash contribution of \$7 million including \$1.6 million for the Amesbury Community Centre. This is a major development and we got a lot of things for the community.

If Metro start fooling around with this or somebody

else starts trying to make another deal, we're going to lose a lot of this because they are—and they're going to make it maybe impossible for the guy to handle it. Who does he talk to? Who does he agree with if you have another level of government getting involved, having public hearings and trying to get more or changing things that the developer already gave? Who does he talk to? Who does he make his deal with? The whole thing is getting ridiculous if it goes this way with Metro.

**The Chair:** Monsieur Grandmaître, one last question.

**Mr Grandmaître:** Mr Mayor, this is not the first time that I've heard municipalities in Metro saying, "We are different," and the rest of the province are saying, "Yes, it is. We all agree that Metro is different, but don't apply the same rules that fit or don't fit Metro throughout the rest of the province," and I agree with them. So what you're saying, if we all agree that planning is the future of our communities, of our municipalities in the province of Ontario, and you say that Metro is so different that Bill 163 should apply to Metro, right—you say that it's good legislation and support it?

**Mr Lastman:** Yes.

**Mr Grandmaître:** But for the rest of the province, for 830 municipalities, it's different. That's difficult to swallow. Mr Mayor, is it your intention, if you don't agree that planning is so important for this province, that you want Metro dismantled?

**Mr Lastman:** No.

**Mr Grandmaître:** No?

**Mr Lastman:** I don't know if I want—I'm not asking for Metro to be dismantled, Ben.

**Mr Grandmaître:** No, that's not political; it's planning.

**Mr Lastman:** Ben, Metro themselves tell you that they're different when it comes to funding, when they want more money or they want something. So they are different, there's no two ways about it, but they don't want to be treated differently this way; other ways they want to be treated differently. They can't have it both ways.

**Mr Grandmaître:** Yes, but that's—

**The Chair:** Monsieur Grandmaître, sorry, we ran out of time. Mr McLean.

**Mr McLean:** Why is it that Metro has the power over the other municipalities? All municipalities around Metro, including Scarborough, Etobicoke, does it have planning power over top of them all?

**Mr Lastman:** Yes. We have to comply with their master plan.

**Mr McLean:** I thought there was going to be a vote to do away with Metro.

**Mr Lastman:** Toronto is having one, the city of Toronto.

**Mr McLean:** Would you agree with that?

**Mr Lastman:** No, I don't think so, no.

**Mr McLean:** But you feel that the planning power that they have—

**Mr Lastman:** I think there could be some changes to

make Metro more accountable, but it's not accountable now because somebody in Scarborough, what do they care really what happens at North York? In a government, you know what to do. If they don't like—let me use a prime minister—the former prime minister, they knew who to vote against, but here at Metro, who do you get rid of? You don't know. There's nobody accountable to anybody and nobody gets deeply involved in local plans, nobody at Metro council.

**Mr McLean:** Who has the power to take the planning authority away from Metro?

**Mr Lastman:** The province does.

**Mr McLean:** And do you feel that they should?

**Mr Lastman:** I'd like it, yes, because it's nothing but a problem, nothing but headaches.

**Mr McLean:** But would the other mayors agree with you?

**Mr Lastman:** I think so, yes. In fact, I think they had me sign something to say that this should be stopped as quickly as possible and Metro should not be given this power.

**Mr McLean:** Could I ask the parliamentary assistant, would you feel that would be an appropriate step?

**Mr Hayes:** What was the question exactly?

**Mr McLean:** To do away with Metro as a senior bureaucracy in planning.

**Mr Hayes:** Right now we are not giving them, in this legislation, the power to approve official plans, and I think Mr Lastman is here supporting what the province is doing on that.

**Mr McLean:** You want to take the power away from them in this legislation of what they've got now?

**Mr Hayes:** No. They're asking for the power to approve and we have not agreed with them.

**Mr McLean:** We've got it muddled pretty good.

**Mr Lastman:** We'd like to see it at the local level but if we can't get it at the local level, please keep it at the province. Don't give it to Metro.

**The Chair:** Thank you. Ms Harrington and then Mr Perruzza.

**Ms Margaret H. Harrington (Niagara Falls):** Thank you, Mayor Lastman, for coming forward today and stating in fact that you are in favour of this legislation in the very first sentence. The whole point of the legislation is to reform the planning system in Ontario, and I think there are very few people who would say that the old system as it was is the way it should be. What we are trying to do is have more emphasis on environmental planning; secondly, give more power to the municipalities; and thirdly, streamline the process and aid in economic development.

What we've heard this morning from the Ontario bar association is that they do want the old system and they feel this will make Ontario less competitive. So I'd like to hear your point of view a little more fully on the broader parts of the bill. Do you feel this will help the competitiveness of Ontario? And what would you say to the Ontario bar association?



**Mr Lastman:** The bar association?

**Ms Harrington:** They want the old system of planning.

**Ms Paula Dill:** Generally, the city of North York is in favour of the legislation. Specifically, clarifying the province's position on policy matters is a positive step. Therefore, that would eliminate time delays and would clarify the roles more clearly, which, I think, is positive response to the Ontario bar, because it wasn't in the last act.

There are certain streamlining measures which we think are appropriate and positive, but then again, coupled with some of the time limits suggested, we have some problems. For instance, the six months required to do a development that is required by the municipality is positive; we can live with that. However, the five months that the province has taken we feel is a bit onerous. It could be made more efficient.

There are some separate streams for the committee of adjustment in terms of minor variances and the province has requested that the time period be lengthened to 30 days for the notice. The time period is shorter now. Most committees of adjustment work fine within that. Why lengthen the process?

We feel that establishing a development permit system is a positive initiative.

Enabling municipalities to require land conveyances for public transit right of ways under site plan approval is a positive initiative.

Introducing the principle of controlling sewer and water allocations through the subdivision approval process is positive as well.

There are some other minor areas, but generally the act is not that prescriptive and clear, and in those areas that I've just mentioned, North York is supportive.

The wording contained in the comprehensive policy statement should not be as directive as it is. We would like more of an interpretation in terms of having the province clearly focus on the broad policy level and letting the municipalities make the decisions that suit the local needs. I think the mayor has clarified that quite well.

An official plan process should be introduced which fully integrates the requirements of the Planning Act and the Environmental Assessment Act with one single ministry as the coordinator, because that would truly save time and money, in our opinion.

The requirement that public hearings be held for subdivisions would seem unnecessary since hearings are held at the principal development stage, at the official plan and the zoning level.

I think that is in general some of the responses that we would have to the Ontario bar.

**Ms Harrington:** Thank you very much. I would like Mr Perruzza to get his question on the record.

**Mr Lastman:** Environmental control, that should be Metro. That's vital, it's important and Metro should be very concerned with that. They should be involved with that. They should be involved with the sewers, the

bridges, the major arterial roads and so on. This is all important and vital that Metro should be doing this.

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**Mr Perruzza:** I too would like to welcome the mayor and the city of North York delegation to the committee. As always, I enjoy the mayor's comments whenever I have an opportunity to hear him speak.

Just to pick up a little bit on what Mr Curling and, to some degree, Mr Grandmaitre were alluding to: The Metro situation per se vis-à-vis the new bill is somewhat different in terms of its application than the rest of the province, because, as you know, there's very little in terms of agricultural area within Metro, unless you include in that people's backyards and their gardens. The natural habitats to some degree are designated as such currently.

In picking up on the top-down provincial government planning approach where you usurp the authority of the local councils, I don't think that's something that happens with this bill and with this legislation in that the local councils, quite rightly, have significant control over what happens to their neighbourhoods and to their community, although housing is and would be a question mark.

I appreciate the mayor's steering away from the governance question when it was asked by Mr McLean so that we don't get into a kerfuffle today with Metro, but there are definitely some issues which I believe at some point need to be ironed out with respect to the duplications and the costs involved and the squabbles and the delays and all of those matters, because the Metro case is different again in that regard from many of the other regions across Ontario. You really, as a Metro member, don't have an opportunity to pick up on that until you get out there into the regions and into the small towns and rural communities, and quite truly I've discovered that that's the case.

**The Chair:** Mr Perruzza, I'm sorry to interrupt you, but please don't ask your question because we'll run way over time now. So finish the comment.

**Mr Perruzza:** I was going to lead into a question, but just to clear that up and just to say that I agree with the city of North York's position in local control of planning, because I believe that if the local councils lost that local right, all of our communities across Metro would suffer. But we need to clean up some of those other areas as well.

**The Chair:** Mayor Lastman, we ran out of time. This committee is always happy to see you and we thank you and your staff—

**Mr Lastman:** The few who are left.

**The Chair:** Thank you all for coming and sharing your views with this committee.

**Mr Lastman:** Thank you very much.

ONTARIO PROFESSIONAL PLANNERS INSTITUTE

**The Chair:** We invite the Ontario Professional Planners Institute, Mr Tony Usher and Ms Marni Cappe, chair of the working group on Bill 163. Welcome to this committee.

**Mr Tony Usher:** Thank you, Mr Marchese, and mem-

bers of the committee. Marni Cappe, who is with me, is from the city of Ottawa. She is one of the key members of our public policy committee and she coordinated our efforts in preparing this brief. I'm the president of the Ontario Professional Planners Institute. I'm going to make some remarks and then we will both try to deal with any questions you may have.

The Ontario Professional Planners Institute is the professional body of planners in Ontario. It is also the Ontario affiliate of the Canadian Institute of Planners. OPPI represents 2,100 working planners from a very wide spectrum of practice in both the public and private sectors. Whomever we work for, our job is to protect and promote the public interest in improving the quality of Ontario's environments and communities.

OPPI has made significant contributions to planning reform. Our five submissions from the beginning to end of the Commission on Planning and Development Reform in Ontario were developed by a volunteer committee that drew on the wide range of our members' expertise. This strong commitment continued with a submission to the province on the New Approach to Land Use Planning consultation paper, and it now carries forward to the next phase of the process, not only with this submission but also with our participation in the provincial implementation committees and working groups.

Before we turn to our brief, I'd like to speak to a couple of broader issues which are very important to us and which we have consistently advocated since the government embarked on planning reform three years ago, much to our applause. Bill 163 addresses only one part of the spectrum we planners deal with. This is our one chance in this three-year process to remind you, the ultimate decision-makers, of the bigger picture.

First, please don't forget that this process reviewed only the Planning Act, not the whole system of planning in Ontario. For example, during these three years, two concurrent reviews have been conducted of other portions of the planning system: one of the Environmental Assessment Act by the Ministry of Environment and Energy, and one of public land and resource planning by the Ministry of Natural Resources. We're still a long way from an integrated, coordinated planning system in this province and there are other provinces that are well ahead of us in this.

The second point is that municipal restructuring has been the great unspoken issue of planning reform. The Commission on Planning and Development Reform adroitly avoided this issue and, by doing so, probably improved the saleability of its recommendations. However, most planners are convinced that planning reform will only achieve its full potential if and when extensive restructuring takes place.

Now I'd like to turn to our brief, which has been prepared in consideration of the three main principles that underlie planning reform. As articulated by Minister Philip, these are: municipal empowerment, protecting the environment, and streamlining the planning process. The minister is promoting the planning reform package as the embodiment of these principles.

We agree with much of the bill and we have not

commented in our brief on those areas with which we concur. However, we remain concerned that the changes do not go far enough to realize the three principles of planning reform or, worse, that certain sections of the bill may deny them.

The first part of our brief is: empowering municipalities. In establishing the principle of empowerment as one of the cornerstones of the reform package, the minister has interpreted this to mean that municipalities will be given greater control over the development process. We also believe that the principle of empowerment must be rooted in a position of trust; that is, the province should respect the strengths of municipalities and trust them to make the right decisions, even if occasionally they make mistakes. We find that many of the proposed reforms only appear to give municipalities power. In fact, ultimate authority will remain with the province.

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Among our specific concerns enumerated in our brief are the following:

Purposes of the act: None of the statements of purpose embrace the principle of empowering municipalities; instead the provincial role is emphasized. If the province is sincere about supporting municipal empowerment, this principle should be explicitly articulated.

Provincial interests and policy statements: The amendments exempt ministers, other than the Minister of Municipal Affairs, and they exempt other provincial agencies from having regard to provincial interests or from acting consistently with policy statements. We cannot agree with this exemption.

Policy statements: OPPI remains concerned with the requirement that decisions "shall be consistent with" policy statements. As expressed in our brief to the government on the consultation paper, the policy statements "are to be supreme to all other values, goals, and policies. The 'shall be consistent with' clause ensures that supremacy.... The supremacy afforded to provincial policies...without the benefit and support of implementation guidelines to interpret those policy statements is the root of the problem" and of our concern.

The implementation guidelines that will support the policy statements must be prepared before we can support the use of the "shall be consistent with" clause. The guidelines must be flexible and allow for local adaptation while respecting the need for consistency in interpretation. We will continue to encourage the province to more fully involve the planning profession in the development of these important guidelines.

Joint municipal planning areas within counties: These amendments cause us concern with respect to the principle of empowerment and, to a lesser degree, the principle of streamlining. We believe that the concept of joint planning is valid in so far as the need exists to address important planning issues which transcend political boundaries. However, the implementation of that concept is flawed.

County planning is currently successful in many parts of the province. Enabling municipal planning authorities in these areas will undermine county planning authority



as well as lead to duplication and confusion. Such consequences will contradict the foundation and principle of empowerment.

On the other hand, we can accept municipal planning authorities within counties where there is no prospect of county planning. We also fully support joint planning between abutting municipalities in different counties or regions, or between a separated municipality on the one hand, and its county or abutting municipalities within the county on the other hand.

**Official plans and subdivisions in Metro Toronto:** The amendments give approval authority for local official plans to regions that have official plans. As well, all regions will be given approval authority for plans of subdivision. However, the province's largest regional government will be exempted from these delegations. We see no justification for this.

**Official plans of counties:** The amendments do not give to counties with official plans the authority to approve local plans of their component municipalities. We see no reason to distinguish between regions with plans and counties with plans in this respect.

**Subdivision approval authority:** The amendments delegate subdivision approval authority to regions, and not to counties, regardless of whether the region or county has an approved plan. Incentives such as delegated authority should exist for municipalities to prepare official plans. We recommend that the authority to approve subdivisions be delegated to all regions and counties that have approved official plans.

The second section of our brief deals with protecting the environment.

The minister has identified environmental protection as a second cornerstone of the new approach to planning. Achievement of this largely rests on the implementation of the provincial policy statements, each of which contributes in its own way to this goal. We have already indicated our general support for the goals of the policy statements.

There's one key issue in Bill 163, however, under "Official plans—prescribed process." The amendments appear to allow a municipality to prepare and adopt an official plan under the requirements of the Environmental Assessment Act. It is unclear on what basis a municipality would be able to choose this process. It's all left to regulation. We request that the minister provide details of the alternative process, and the mechanisms to apply to it, prior to approval of this section.

The third section of our brief deals with streamlining the planning process.

The minister has correctly identified the need for streamlining as a key goal of planning reform. The government maintains that the package of proposed changes will deliver a planning system which is more predictable, will generate fewer disputes and will achieve decisions in a timely manner. The government is on the right track and we endorse the principle of including specific time frames in the act.

However, we have serious concerns about the inconsistencies in the new act, particularly as they affect

concurrent planning applications. In particular, the act should ensure that requirements for the adoption of official plans, zoning bylaws, subdivisions and consents are consistent in order to facilitate the approval of applications made concurrently.

Furthermore, we question whether the overall effect of the combined changes in the legislation will actually result in a more efficient system. Among our specific concerns are the following:

**Official plans—refusal to refer:** The amendments set out criteria for approval authorities and the OMB to follow when considering the merits of an appeal. We cannot find any justification for exempting public bodies from meeting the requirement for prior written or oral submissions as a condition of appeal. We believe that all participants in the planning process should act responsibly and apply their available resources to meet a fair and consistent planning framework. All parties must be treated equally in terms of access to the process.

**Official plans—declaration of provincial interest:** The amendments enable the province to declare a provincial interest as late as 30 days before a scheduled OMB hearing. We cannot support special provisions for the province in the absence of any justification. Bill 163 provides opportunities for extensive input from persons in public bodies, including all provincial ministries and agencies, during the plan preparation and approval process. Furthermore, one of the cornerstones of planning reform is to establish a framework that is led by provincial policy and implemented by municipal planning decisions which are consistent with such policies. It is indefensible that the province can wait until the last minute to declare an interest when adequate opportunities exist throughout the processing of a plan.

We are further concerned that OMB decisions will not be considered final where a provincial interest has been declared. The board's role as independent and final arbiter has been widely accepted by the planning community and the public at large.

**Conditions of subdivisions:** The amendments give any person the right to appeal conditions of subdivision approval. We do not agree that the general public has a right to appeal conditions of subdivision approval, which typically are onerous on the developer already. We believe the public's interests are adequately provided for by allowing "any person" to appeal the decision on a subdivision plan, which is when land use issues are considered.

**Delegation to staff:** We are concerned that the new legislation does not provide for delegation of approval authority to municipal staff, with the exception of development permits. Many upper-tier municipalities currently benefit from staff approval of undisputed subdivision and local official plan amendments. Municipalities should be trusted to make the right decision with respect to delegation of certain approval authorities to staff in order to facilitate the approvals process. Experience in some municipalities has shown that four to six weeks may be saved.

The fourth and final section deals with other matters of good planning, and among our concerns are:

Official plans—mandatory local plans: We are very disappointed to see that mandatory planning by or for lower-tier municipalities is not part of the act.

We believe that, as currently drafted, the amendments appear to assign a higher priority to regional or county planning at the expense of local planning. We consistently advocated mandatory local planning either by local municipalities or by upper-tier authorities on their behalf in our previous submissions to the Commission on Planning and Development Reform.

Development permit areas: The amendments enable municipalities to appoint employees to carry out the duties required under the development permit system by delegating to them the necessary powers. We applaud this, but strongly recommend that delegation be assigned only to a qualified planner on staff or retainer. This wording would enable municipalities that so choose to use qualified consulting planners for delegated approval functions. The definition of “qualified planner” could be set in regulations and it should include, as of right, any full member of the Canadian Institute of Planners. Should the bill be revised to permit delegation of any other approval authority to staff, as we have suggested, we would propose that the same approach be used.

Thank you very much for your time, and we wish you every success in your deliberations.

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**Mr McLean:** Welcome to the committee, and thank you for your brief. The area I want to zero in on is “Official plans: prescribed process,” with regard to section 9 of the bill, in terms of the requirements of the Environmental Assessment Act. You say the definition of “prescribed materials” is left entirely to regulation, but we haven’t seen any regulations yet. I’m wondering what your view would be with regard to what type of regulation we should have there to implement that.

**Ms Marni Cappe:** In our previous submissions and throughout the process of commenting on planning and development reform we had offered to work with the ministry to help flesh those out.

With respect to regulations, we have not, in our minds, designed the type of regulation that would be appropriate. I would echo the comments made by the previous speaker, the commissioner of planning for North York, to suggest that what we’re looking for is a clear and unified system so that one approval only would be necessary. We would certainly like to see that assurance, that we would not have to go both through the Environmental Assessment Act and through the Planning Act to get approvals. That would be the ultimate objective we would be aiming for. With regard to the specifics, I think we would like an opportunity to sit down and help flesh those out.

**Mr McLean:** The other question I have is with regard to delegation to staff. You indicate, “Many upper-tier municipalities currently benefit from staff approval of undisputed subdivision and local official plan amendments.” Would you say there are many subdivisions that are undisputed? I’ve never heard of very many.

**Ms Cappe:** The area I’m most familiar with is the region of Ottawa-Carleton, and we have been very

successful in getting subdivisions approved. There are many, and I’m sorry I don’t have the figures at hand, but we do monitor on a yearly basis our subdivision applications, and we have been able to knock anywhere from two to six months off the process through delegation to staff. We’ve enjoyed that privilege for a while and it has been a benefit, yes.

**Mr McLean:** The other area is the upper tier and the lower tier. In your brief you say every municipality should have an official plan. The lower tier’s, however, would have to coincide with the upper tier’s official plan. The question that’s being asked is why it is necessary that perhaps all municipalities of a county put out an official plan when we’re going to be dealing on the basis of what the upper-tier plan will be? Do you think it’s necessary that every municipality should have an official plan?

**Mr Usher:** I think our view on this, Mr McLean, is that every area that is within a municipality should be covered by a plan that at least deals with lower-tier issues. It is true, we have never endorsed mandatory upper-tier plans. I don’t think we have any problem with mandatory regional plans, but we have never endorsed mandatory upper-tier plans for counties, and of course there are a lot of single-tier municipalities, cities, and all through the north.

I think we have been realists about trying to force upper-tier planning all across the province, and we’ve never called for that. However, in those situations where there is no upper-tier planning, we still feel very strongly that some kind of plan or planning is required, and at least a plan that covers lower-tier subjects is a minimum. If they don’t have upper-tier planning in those areas, so be it.

**Mr McLean:** I think the ministry, though, in its set of policy statements, is recommending that all upper tiers have an official plan within five years. That would cover what you’re discussing.

**Mr Usher:** I stand to be corrected, but did they say that with respect to counties? They’re leaving in the act that they’re saying they’ll be prescribed?

**Mr McLean:** Yes.

**Mr Usher:** Okay. There are still, of course, many areas that are in neither a region nor a county, again particularly in northern Ontario.

**The Chair:** Mr McKinstry would like to clarify a specific point.

**Mr McKinstry:** Just to clarify the requirement for upper-tier plans, there’s nothing in the legislation that would require all upper tiers to have plans within five years. I just thought I’d let the committee know that.

**Mr Gary Wilson:** Thanks very much for your presentation. I found it very stimulating and it raises a number of points that I’m glad you highlighted.

The one I’d like to focus on has to do with your suggestions about county planning in conjunction with the planning for other jurisdictions within a county. You have a suggestion that you would like to see the county, I guess, have the priority. It’s page 3 where you have the suggestion.



We've heard some strong submissions, as you probably would expect, from larger townships in particular, that question the ability of counties to plan for their circumstances, and then they're supporting the municipal planning authorities as being a sensible way of going. I'm just wondering, when you suggest that the region or the county could appoint the members of the municipal planning authority, how would that mechanism work, especially where a separated city is concerned in the county?

**Ms Cappe:** I think the intent of our recommendation was to apply to the establishment of municipal planning authorities where county planning exists, and this was in our particular model where we're supportive of joint planning between municipalities and abutting counties. In order to maintain the principle of keeping that power of planning at the county level where that already exists, we would recommend that the county then have a role in establishing a municipal planning authority for parts of its county abutting another county.

**Mr Gary Wilson:** You're confident then that the county can take into account the disparate interests, say, where it's lightly populated in one area but heavily populated in another—that the plans the county comes up with could encompass both those interests?

**Ms Cappe:** I think we're confident, based on the success of many county plans that we've seen in Ontario, yes.

**Ms Harrington:** Thank you both very much for coming this morning. On the basis of my past experience sitting on the city council in the city of Niagara Falls, I have very high regard for professional planners and the job they do in trying to help politicians make the right decisions for the future. I believe planning is one of the very most important things that municipal councils do.

Two things I want to reinforce that you have said—reinforce to our ministry—is at the top of page 2, the fact that other ministries and provincial agencies are not bound by section 2 of the act. I think that is something very important that you've brought forward, and other groups as well.

Secondly, you're concerned with, "shall be consistent with." We know we have to have strong guidelines and consistency across the province—I think that is very important—but what you are asking for is implementation guidelines which would help the lower-tier municipalities, or municipalities in general, deal with this. That is a fair type of request and I think you are not objecting to "consistent with" but trying to make it work. Maybe you'd want to comment on that.

The other thing I would like to just ask you to comment on is if this legislation goes ahead, with certainly some adjustments here and there, do you think it will help or hinder the competitiveness of this province?

**Mr Usher:** Maybe in response to your first point, Ms Harrington—although it's one of these things, like with municipal planning authorities. You will never get 2,100 planners to agree unanimously. I think the mainstream opinion in our profession will accept the wording, "shall be consistent with" when it's coupled with a flexible, to

a reasonable degree, understandable implementation process.

We have always been concerned that throughout this process we have been asked to accept one half of the bargain without knowing what the other half of the bargain is, but we're not fundamentally—we have never been fundamentally advocating that we should stick with "have regard to" or some other formulation. If, at the end of the day, we have a good process, we're happy with "shall be consistent with" and we will want to help the government make it work.

With regard to your other question about competitiveness, maybe my colleague might—I don't know whether she is more willing to touch that one than I am. Although some of us are economists by training, I think planners very much believe that planning is there to support three—it's a three-legged stool: environment, economy, social. We have often spoken out when we felt that planning policy is veering too much in one direction or the other of those three stools. So we very much support the economic as one of the primary objectives of planning reform and I think in our work we try to keep that as one of the primary focuses of what we do.

That said, most of us, I think, do not consider ourselves economic experts. We leave that to economic consultants, to economic development officers, to politicians who often in many cases have a more global sense, and to applicants.

I think we would be reluctant to give you a blanket opinion as to whether these reforms will improve the province's competitiveness. If they are good reforms, and we believe that a great deal of it is good, and if it is improved in the directions we suggest, then it will contribute to all three legs of the three-legged stool. If we have a better economy, then that's going to increase our competitiveness.

1200

**Mr Grandmaitre:** You did have an opportunity to listen to the previous presentation, Mel Lastman. Mayor Lastman would love to have an exception for Metro and you say no exemption. Can you amplify on this?

**Mr Usher:** We didn't hear all of Mr Lastman's presentation.

**Mr Grandmaitre:** Maybe I can give you his last comment, "For God's sake, don't give it to Metro, leave it in provincial hands." That's a great statement by Mr Mayor. Sorry, go ahead.

**Mr Usher:** Again, it's one of these things where we're never going to take a position that every planner in the province is going to agree with, including my colleague Ms Dill, the new commissioner who was sitting here a few moments ago and is a member of our institute. But I think generally we try to take mainstream positions that support comprehensive and equal treatment. That is what the majority of the planning profession wants and seeks. We're democrats and we're egalitarians and on that basis we find it difficult to see why Metro should not be given an approval power that Peel, when it gets an OP, or Oxford or Durham are going to get.

There is no question in the minds of many of us that

there are governance problems in Metro, that there are coordination problems within the GTA, and we could probably talk about these at great length, but they're beyond—although at the beginning of my presentation I mentioned that municipal organization is the quiet unseen issue behind this. None the less, with respect to Bill 163, we understandably remain silent on these points. Within the limits of Bill 163, we don't feel we can take any position other than say Metro should get the same treatment that other regions get.

**Mr Grandmaitre:** Let's get on with joint planning. You don't necessarily agree that counties, for instance, should have joint planning privileges, if I can call them privileges. That's on page 2 of your submission, joint planning.

"This section causes us concern with respect to the principle of empowerment, and to a lesser degree, to streamlining." Can you amplify on this comment? That's point 1.5, joint planning.

**Ms Cappe:** I think the principal concern that we articulated in this section was that there are, as I've stated before, many counties in Ontario where there is a county plan and good county planning ongoing. The concern we had with the legislation is the ability of municipalities wholly within that county which is governed by an official plan, to themselves establish a municipal planning authority to deal with the separate issue without necessarily having regard for the county official plan.

I think we were concerned that this could lead to some confusion as to which took precedence, the county plan or the plan of the municipal planning authority—furthermore, could lead to confusion and duplication.

What we offered by contrast was the opportunity for some joint planning exercises between municipalities while still respecting the counties who currently have or are in the process of developing their own official plans.

**The Chair:** Thank you very much. Sorry, we've run out of time, Mr Grandmaitre, and Mr Hayes has to add a comment to clarify some other matter.

**Mr Hayes:** Really, on behalf of the government we're pleased that we do have the Ontario Professional Planners Institute that is involved in the implementation committee and on the technical committee. We certainly appreciate that and we think, with your assistance, a lot of these questions will be answered.

However, a question that Mr McLean asked in regard to the delegation of staff, I just want to mention that on September 6 we did hand every member of this committee an amendment dealing with that particular issue and if the Chair will bear with me, I'll take just a moment to read it. It says the Planning Act, amendments to enable:

—upper tiers assigned with the subdivision approval power to further delegate this power to a committee of council, to staff and to the lower-tier municipalities.

—separated municipalities assigned with subdivision approval power to further delegate this power to a committee of council and to staff; and

—upper tiers assigned with the official plan approval power to further delegate this power to a committee of council and to staff.

We are actually addressing that and I hope it will clear this up a little bit.

**Mr McLean:** When will the other amendments be ready so we can have some clarification on some of the other issues?

**Mr Hayes:** They're on their way, Mr McLean, and they're being worked on real diligently.

**The Chair:** Very well, thank you. Mr Usher and Ms Cappe, we thank you very much for a well-informed brief and thank you for coming.

*The committee recessed from 1206 to 1335.*

**The Chair:** I'd like to call the meeting to order.

CITY OF TORONTO

**The Chair:** We welcome the city of Toronto, Commissioner Robert Millward, Councillor Barbara Hall, Councillor John Adams and Mr Dennis Perlin, city solicitor. You have a half an hour for your presentation. I'm sure some of you have done this before. Leave as much time as you can for the members to ask you questions.

**Ms Barbara Hall:** I'm starting and then Councillor Adams will make some comments and then the four of us would be happy to answer any questions you have.

Thank you for the opportunity to come before you today on proposed changes to the Planning Act. We're generally supportive of the province's initiative in introducing these amendments. However, we do have some areas of concern and I'm going to highlight them very briefly.

First, with respect to provincial policy statements in section 2, there are a number of important areas listed there. We would like you to add clear statements on the protection or improvement of air quality and the remediation of contaminated sites, both issues of urgency in the city of Toronto.

In terms of section 16, official plan preparation, we would like to see some integration of how the preparation of an official plan and official plan amendments could be integrated under both the Environmental Assessment Act and the Planning Act. We believe that this kind of integration would offer opportunities for resolving more issues through consensus and would potentially streamline approvals and avoid lengthy and costly hearings before the various tribunals.

With respect to delegated authority and official plans and plans of subdivision, I believe you have a letter from the mayors of the six Metropolitan Toronto area municipalities—

**The Chair:** Sorry to interrupt you, Ms Hall, but are you directing us to any particular page in this document or are you reading from some other—

**Mr Grandmaitre:** Yes. Can you help us follow your presentation through this book?

**Ms Hall:** No.

**The Chair:** Okay, that's fine.

**Ms Hall:** This is section 5, which deals with Planning Act amendments, tab 5.

As is laid out in the letter from the mayors—and I



would point out that a letter signed by six mayors in the Metro Toronto area is a fairly rare expression of unanimity—it says that we believe local area municipalities in Metro Toronto should be delegated the authority to approve their own official plans, plan amendments and plans of subdivision, provided, of course, these plans and plan amendments are in conformity with the regional plan, consistent with provincial policy and the criteria for subdivision approval stipulated elsewhere in the Planning Act.

We believe the delegation of these powers to local municipalities would avoid confusion and duplication of overlapping authorities between Metro and the local governments, and again importantly, reduce costs and avoid unnecessary delays in the development approval process.

With respect to site plan control, subsections 34(5), 41(7) and 41(10), there are a number of items that we would like added to allow us to address environmental issues. Subsection 41(7) should be amended to permit a whole list of items, which is on page 8 in tab 5—I won't read through them all—running from an air quality plan, soil remediation plan, noise impact plan etc.

Another area many of you may be familiar with, and I'm going to leave you some press clippings and brochures about the city's very successful public art program which we have been able to implement over the past few years—we believe that the results have been impressive. Artists, tourists and Toronto citizens all enjoy the wonderful creations on our streets, in our parks and on our buildings. We believe that public art is one of those things that helps to make a healthy, enjoyable city with a lot of urban activity.

The ability to deal with public art as an element of site plan control is vitally important to all urban centres in the province, not just to the city of Toronto. We would recommend that subsection 41(7) be amended further to permit a municipality with an official plan which contains appropriate policies and provisions to require public art as a condition of site plan approval for large development projects.

Another issue related to site plan control is our need to be able to require easements for the Toronto District Heating Corp, one of my colleague Councillor Adams's very closely held activities at the city. Without this power, we're unable to implement our energy conservation policies and we'll be stuck with single-building furnace systems for ever. Again, we think that other urban centres in Ontario are struggling with the same issues. We would like subsection 34(5) of the proposed legislation to be amended, to be explicit about our capacity to require easements for the TDHC as a condition of site plan approval.

The proposed section 45, dealing with minor variances, would eliminate the current right to appeal a minor variance decision by the city of Toronto committee of adjustment to the Ontario Municipal Board. The city of Toronto doesn't want to be in the business of hearing such appeals. On the other hand, we're committed to due process, preserving the right to appeal minor variance decisions. We believe that the current appeal system

works quite well, with a couple of exceptions.

We think the OMB could be equipped with additional powers to dismiss appeals without a hearing, for example when there's no apparent planning reason for an appeal or if an appeal is frivolous or vexatious or made solely for the purpose of delay, a situation which occurs much too frequently in the city at the present time, and I'm sure around the province, something that not only delays things we want to be happening but also is costly for the OMB as well as for the applicant.

These are just a few of the points of the city of Toronto submission. Some of you have held it up and clearly there are a lot of other items in it which I don't intend to go through today. We would also, however, like to offer to work with your officials, at your convenience, on any issues that need clarification, that need real-life examples or further documentation.

I'm going to pass it over now to Councillor Adams and I'll be happy to answer any questions at the end. I also have some materials here on the public art program that members might be interested in looking at. You can come for a tour any time you want.

**Mr John Adams:** I appreciate this opportunity. I will just highlight a few of the additional recommendations. This government bill bridges two important sets of values, one having to do with good planning for Ontario in the future and the other having to do with honesty and ethics in government. I'm going to focus on some of those honesty and ethics issues in government.

I want to say that the city does share the province's goals in introducing the new Local Government Disclosure of Interest Act, 1994. Toronto has been one of those municipalities in the forefront of introducing a code of conduct for its own members, myself included, financial disclosure requirements regarding assets and liabilities and rules with regard to the acceptance of gifts.

I think that ethics in government are very important, and actually the important bridge here to the Planning Act. In my view, one of the most important things that local government does is regulate the creation of wealth through the process of the Planning Act, rezoning—its official plan amendments. That's why a certain breed of real estate developer takes a very special interest, an undue interest in some cases, in who the members of local municipal councils are.

I want to say that I was a new member of Toronto city council in November 1991. My life changed when I won an election. My life changed again on April 1, 1993, when someone tried to bribe me in my office at city hall over a real estate matter, and that was the one time, so far in my life, I had an occasion to phone the chief of police and report that; I made an official complaint. Project 80 continues the investigation of that particular matter.

So I think it is important to regulate the conduct of politicians. We've had some recent court proceedings and some other proceedings that remind us of those needs. I think it's in that context that I'm here to encourage you to press forward with this noble task.

Standards for ethical conduct should be tough, but they

should also be user-friendly and easily understood by the first-time reader of the legislation, whether that is an elected person such as myself and yourselves, whether that is a voter or whether that is a journalist.

I would offer the following specific suggestions, if I might. Some of the definitions are problematic. You're creating the possibility of a daisy chain. You have to not only read this legislation but to understand what the definitions really mean, and what they apply to you have to read other pieces of legislation. If you want to make this user-friendly, you're going to have to find a way to write the appropriate definitions into this piece of legislation so it can be sat down, read and understood without knowing other pieces of legislation.

Secondly, in terms of the committee, we have many different kinds of committees. We do advertise in a variety of ways for people to help run Toronto city hall. We want to create lots of vehicles for people to participate in decision-making processes at the local level.

I think actually some of the rules are too tough, and you haven't completely understood how it really works at the local level. We would propose that you delete from its coverage those committees comprised solely of citizen members or a mixture of citizen members and councillors if those committee are not final decision-making bodies.

Let me give you one specific example. In my own ward in midtown Toronto, there's a major official plan amendment and rezoning application under way, the Marathon lands at Yonge and Summerhill, 18 acres. We have established, through our planning advisory committee, an official working group which had many, many meetings. We wanted to invite the developer, Marathon Realty Co, to the table. We invite local home owners and ratepayers and resident representatives, local business association representatives, the ward councillors, planning staff to act in a support role if the rules apply. But this working committee has only the power to consider matters, the power to make suggestions or recommendations. It can't make any decisions under the Planning Act.

Under these rules, it would be virtually impossible to have that kind of forum to see if issues can be clarified, that people can come to an understanding, agree or perhaps work out some agreements at the local level, and at least if they are going to disagree that they be informed disagreements, as opposed to poorly considered or ill-informed disagreements.

I suggest to you that our long-established practice of inviting citizens and real estate developers to sit down at the same table will be made much more difficult, if not impossible, to actually work out in practice if these ethical rules are applied in that kind of participatory context, recognizing that they don't have the authority to make decisions under the Planning Act.

1350

At the very least, we would suggest that the legislation be amended to permit non-council members on committees and working groups which are not final decision-making bodies to remain in the room, to participate in the discussion and to vote on matters even if they have declared a pecuniary interest. It's clear that Marathon has

a pecuniary interest in the matter, but we would like them to be able to participate in a working group process.

The legislation should also be clarified with respect to the meaning of the term "committee." "Committee" is defined, but the legislation, in our view, is unclear as to whether the committee, as defined, is the "committee" also referred to in the definition of "local board." This gets a little esoteric, but I know the researcher assigned to this committee will want to delve into it deeply and give good advice to the committee in writing your final report. Our more detailed brief goes into that issue in some detail. I commend it to the attention of the appropriate officials.

On the question of the local board, we think the definition of "local board" should be amended to delete the words "or any other local board, commission, committee, body or local authority." We think there is a problem in the overlapping and gapping definitions of "committee" and "local board." We have a variety of committees: a film industry liaison committee, industrial coordinating committees; we have had a land disposition subcommittee. We think because of the many different "hybrid varieties" of committees at the local level, it might be best to have them covered by regulation as opposed to the all-embracing definition in the statute.

On the Toronto District Heating Corporation Act, which Councillor Hall has referred to, it was a source of great controversy. Certain aspects of district heating in Toronto were also the subject of a Project 80 police investigation which I have some knowledge of. In this case, I think it's really important that the Toronto District Heating Corporation Act, which is an act of this Legislature, be amended to provide that it is a local board for the purposes of the Local Government Disclosure of Interest Act. There is no statutory rule for declarations of conflicts of interest by the 10 board members of the Toronto District Heating Corp and we submit that there ought to be. This committee has the opportunity to address that gap in the regulatory framework. At least the corporation should be included in the schedule to the regulations made under the new legislation whereby the heating corporation would be subject to these conflict rules.

On the question of the powers and duties of the commissioner under the act, we suggest that the commissioner, in addition to the power to issue guidelines, should be given the power to provide advice to members, to boards and to municipalities in the same way that the commissioner of election finances provides advice to members in municipalities on election finance matters and in the same way that the commissioner appointed pursuant to your own Members' Conflict of Interest Act provides advice to members of the provincial Legislature. The commissioner should be requested to issue guidelines respecting gifts, hospitality and personal benefits which may be considered appropriate as gifts or benefits when they are received by members as incidents of the protocol or social obligations that normally accompany the responsibilities of office.

My next point concerns the conduct of members of municipal councils in influencing employees or other



persons interested in a contract within the jurisdiction of the local board or the municipal council. I think the legislation should be amended to make it apply to all matters in which a member has a pecuniary interest, not just a matter of a contract with a local board or with the municipal council. As well, I'd suggest that the legislation should be amended to clearly prohibit a member from exercising influence on officials, that is, employees of the municipality or board, and be expanded to clearly prohibit a member from exerting influence on officials of other public bodies, municipalities or provincial or federal bodies, which may have an interest or be involved in a matter where the member of council has a pecuniary interest.

It's clear to me that when I call someone at another level of government as Councillor John Adams for the city of Toronto, it gets, frankly, a level of attention. If I happen to be advancing my private economic interest at the time I think, frankly, I should be criticized for abusing my public office. I ask the committee to direct staff to deal with that.

On the question of the definition of "spouse," I think the Legislature has considered this matter in another context. I happen to serve on Toronto city council with Councillor Kyle Rae, who is not shy about telling us about his sexual orientation. If Kyle Rae has a spouse, and I don't know whether he does or doesn't, I think his spouse should be subject to the same rules on conflict of interest as my spouse. I would ask the committee to deal with that out of a sense of fairness and a level playing field.

Also, to make this law on conflict of interest user-friendly, there should be a central registry in each municipality. There shouldn't have to be a different registry of declarations of interest for every local board and committee and agency and corporation and council. That makes it virtually impossible for a concerned citizen to become fully informed about whether members of council have been fully compliant with all of the terms and conditions of the legislation.

On the question of the Municipal Act itself and the disposal of property, the city of Toronto is frequently involved in land exchanges with both public and private sector bodies to acquire property for municipal purposes or to facilitate the achievement of broader public benefits. Often the city enters into long-term lease arrangements of city property to support city objectives, but the property involved in such transactions is not surplus. We think the legislation needs to be amended to make a distinction between the property which is surplus and property which we are contemplating disposing of but which is not surplus for municipal or public purposes.

I want to tell you a very concrete example. This is in my ward, on Marlborough at Yonge Street. This is the public road, Marlborough Avenue; this is Yonge Street. There's a little laneway here and there's a little 800-square-foot stub of a public lane that Marathon has asked the city to acquire. That's 800 square feet. In exchange for that, a little further west on Marlborough there's 18,000 square feet of land which is presently leased to the city, in part as a park, and the other part is being used

on an informal basis by local residents to park their vehicles.

I think it's reasonable for the city of Toronto to come to an arrangement with Marathon for a land exchange, providing our appropriate officials attest as to the fair value, without having to go through all the hoops that you're contemplating imposing upon us in this kind of transaction. This is not surplus to municipal purposes. The principal purpose of such a land transaction would be to facilitate another public purpose, to allow a site to become more developable, to allow the residents to have the benefit of parking where they have no parking on their own property and to preserve in perpetuity a piece of land as a public park and green space.

As well, before dealing with surplus real property, our city does first determine whether another level of government would be interested in the acquisition. The requirements in the legislation would be that real property be declared surplus and that notice be given to the public of any proposed sale. This would severely limit the city's ability to negotiate with affected parties. It would also unduly impact the length of time required to complete transactions such as the one on Marlborough.

The city recommends that the legislation be amended to clearly define "property" and "surplus," and to limit the application of the legislation to real property which is not required to support any direct municipal purpose.

The legislation requires every council and local board to pass a procedure bylaw with respect to the sale or disposition of real property. In addition to establishing procedures with respect to sales, procedures must also be established for the giving of notice to the public with respect to such sale or disposition. The city of Toronto recommends the deletion from the legislation of the requirement for public notice in sales between levels of government or other public bodies, in sales related to lane and road closures and in sales of small parcels of undevelopable land to abutting land owners. A public report process could be required instead of the public notice.

No time limit has been set in your legislation with respect to when those procedural bylaws must be passed, although it appears that no new sales or dispositions may occur after the coming into force of your legislation unless the procedural bylaws are in place. The city recommends that a municipality or local board be given at least 180 days from the coming into force of this act in which to pass the necessary procedural bylaw. This would be consistent with the period of grace allowed to councils and local boards to pass procedural bylaws consistent with open meetings, another part of the legislation.

How's my time, Mr Chairman?

1400

**The Chair:** You can go on, but I should tell you there won't be time for questions so you might as well just complete your submission.

**Mr Adams:** All right. My apologies for that.

**The Chair:** No, that's all right.

**Mr Curling:** This bill is too large for half an hour.

**The Chair:** Go ahead, Mr Adams.

**Mr Adams:** And it's quite important.

**Mr Ron Eddy (Brant-Haldimand):** It is, really.

**Mr Adams:** With respect to site alterations, section 4 of our brief, the city would like to have the ability to pass bylaws that would clearly allow us to prohibit the dumping of refuse, debris, excavated material or construction material in any defined area or on any class of land. I believe you have heard from others about the problem. There is a real problem in the city of Toronto and other places with unregulated or not well regulated dumping, and we would ask for your assistance in that regard.

We would also like to have the ability to pass bylaws to require that refuse, debris etc be removed by the person who dumped it or placed it or who caused it or permitted it to be dumped or placed. Your legislation does not address the issue of a dumper who is not the owner of the land on which the material has been deposited, and we would definitely ask you to deal with that omission in the legislation.

We also think that the fines have to be made real.

**The Chair:** I just want, as the Chair, to thank you, Mr Adams, Ms Hall and the city of Toronto officials, for coming and for submitting a very thorough report to this act.

**Mr McLean:** I have two short questions.

**The Chair:** No time, sorry.

**Mr McLean:** All right.

#### CITIZENS CONCERNED ABOUT THE FUTURE OF THE ETOBICOKE WATERFRONT

**The Chair:** We will invite the next deputants to come forward, Citizens Concerned About the Future of the Etobicoke Waterfront, Mr Michael Harrison. Mr Harrison, we welcome you and we ask you to begin as soon as you're ready.

**Mr Michael Harrison:** Thank you, Mr Chairman and members of the committee, for allowing us the opportunity to come and speak to you today. We are a public environmental group of concerned citizens in the city of Etobicoke, and we are an incorporated, not-for-profit corporation. We formed in the fall of 1989 and since that time have been involved in a number of development and planning issues in the city of Etobicoke.

We've been involved in two major Ontario Municipal Board hearings. The first one was the Etobicoke motel strip, which we attended daily and participated fully in, and the second one was the Humber College/Management Board Secretariat's development proposal for lands on the Etobicoke lakeshore of the former Lakeshore Psychiatric Hospital and the adjacent Humber College lands.

In addition to that, we've also been involved in a number of local environmental issues and policy items—wetland re-creation, habitat restoration, parks policy—and as such we're familiar with the planning process carried out in Ontario under the Planning Act as it touches on so many things. As an organization, we have always been interested in the planning process, and so when the opportunity came to participate in the Commission on Planning and Development Reform in Ontario, otherwise

known as the Sewell commission, and in the review of the act, we did so fully.

What we've done today is review Bill 163 and we'll bring to the attention of the committee a number of things that we are concerned about. But on the whole, in general, we're very pleased with the results of the Sewell commission and the bill that's before you today.

One of the first items is policy statements issued under section 3 of the act. As you know, the current wording of the Planning Act is that municipalities only have to "have regard for" policy statements issued under section 3 of the act, and this new bill will change that to "be consistent with." We feel that's probably the most important change in the whole bill. We heartily endorse it. As such, it's the only way to ensure that provincial policy statements are complied with across the province, especially as now the idea is to delegate more of the authority to municipalities.

The second point is the application of policy. In reviewing the bill we discovered that Bill 163 contemplates amending the act so that only the Ministry of Municipal Affairs would be bound by provincial policy statements. That's in a number of pages. We feel that such policy must apply to all provincial ministries and government agencies, including Ontario Hydro, especially as nowadays many ministries and agencies seem to be getting into the job of land development on surplus lands, which is something we're familiar with in the city of Etobicoke with the Humber College/MBS development proposal. Just on a point of being fair with everyone, if you expect private developers to abide by the policy statements, you should have your own ministries abide by them.

The next point is rights of appeal. We noticed that in a number of locations appeals to the Ontario Municipal Board have been amended in that one of the grounds for dismissal would be if the person requesting the referral did not make an oral or a written submission to council before the plan was adopted. While we can understand the need to streamline the development review process and encourage individuals and groups to identify their concerns as soon as possible in the planning process, we think this provision goes a bit too far and is quite dangerous. It's a very blunt instrument that could be used to repress legitimate concerns. For example, what if an individual was away over the summer or for some reason was not aware of an issue, or what if they've just moved into an area and just discovered the issue?

As we see it, there are already a number of grounds available in the act to dismiss appeals that would have no legitimate planning grounds attached to them and therefore we see no need to have this additional provision in the act. So our recommendation would be that you would delete that.

Again, as part of Mr Sewell's commission, he proposed that meetings be held by the OMB within 30 days of an appeal to discuss the appeal and whether or not it had legitimate grounds to continue, and at that time it could be dismissed.

In addition, we understand that Bill 163 amends the right of appeal from committee of adjustment decisions



in that you would no longer be able to appeal them to the Ontario Municipal Board and that council would have the final decision. We think that's a dangerous provision. In many cases, as I'm sure you're aware, sometimes committees of adjustment give little more than minor variances, and we believe the right of appeal should remain in case things like that should happen.

On the issue of intervenor funding, as part of Mr Sewell's commission he made a number of recommendations about intervenor funding and that it should be available to certain groups in certain cases. For example, I can tell you, appearing daily at the Etobicoke motel strip hearings on behalf of the public interest, we were limited in some respects because of our lack of adequate funds to hire expert witnesses. We think it's an issue of equity and fairness, because in most cases, without expert witnesses, one's evidence just does not carry any weight with the board no matter how clear or accurate you are.

We strongly believe in intervenor funding and that it must be available to assist groups at the OMB, and therefore we would ask that Bill 163 be amended so that such funding could be provided under the process that Mr Sewell has outlined.

**Comprehensive planning:** As one of the groups active in development issues on the Etobicoke lakeshore, we can tell you that one of the more important issues discussed over a long period of time has been the issue of comprehensive planning and whether or not incremental decisions on development, made in isolation from each other, are not leading us to some unforeseen and cumulative impacts that just weren't expected.

One way Mr Sewell tried to deal with this was that he had a recommendation that when preparing new plans, municipalities should identify and review options and alternatives. Now this has been used in the city of Etobicoke in its plan for the Parklawn Road/Lakeshore Boulevard secondary plan area. A variation of this process was tried, and I think it worked quite well. Two options were presented for consideration, along with a discussion on the advantages and disadvantages of each, and it was clearly explained to the public so that they'd have all the information before them. We think that such processes should be a requirement, especially when large areas are considered for redevelopment. As we understand it, the current bill, though allowing for that option, doesn't make it mandatory. We only see it as an innovative win-win process and we'd like to see it in there as being mandatory, not optional.

1410

**Site alteration:** Another problem with the current Planning Act is the lack of power that a municipality has to prevent land owners from the large-scale removal of vegetation and trees on recently acquired land. As you're probably aware, these things crop up from time to time in the local media. We understand that during the Sewell commission many municipalities, individuals and groups expressed a concern in that area. As such, Mr Sewell recommended that municipalities have the ability to regulate such activity. We notice that while Bill 163 contains provisions to enable municipalities to regulate placement and removal of fill, it seems to be silent on the

protection of trees and vegetation, so we would request that the bill be amended to include that.

**Contents of official plans:** Another issue that was raised in the Sewell commission examined what matters official plans should address. Currently there's an inconsistency, especially when it comes to protection of the environment, in many official plans in the province. Some municipalities are very advanced in that area while others are not. To remediate that situation the commission recommended that the Planning Act be amended to include a list of matters that would be addressed in official plans.

From watching these hearings and reading the newspapers, I understand some of these matters might be addressed when the regulations are drafted, but those aren't yet available for review. I would ask the committee to monitor that, and if it's in the regulations, that's fine. But if it's not, then we would request that it be in the bill.

Finally, on the issue of public notice, the Sewell commission made a number of recommendations on public notice, such as having a registry and that type of thing so that people would be aware of things and they wouldn't slip by without being noticed. Again, we understand that this might be in regulation. If it is, then that would be okay. If not, we would ask that it be put in the bill itself.

That's our presentation to you today, and I'd be happy to answer any questions.

**The Chair:** Okay. Thank you, Mr Harrison. We'll begin questions with Mr Eddy, five minutes.

**Mr Eddy:** Thank you very much for your presentation. You've covered many of the same items and submitted many of the same recommendations that many other groups have submitted for our consideration. Your point about regulations is well taken, and the only thing I would say is that you said they're not available now for review, and that's true. They will be available later, at some time probably after the act is passed, but they will not be available for review. So that certainly is a problem, and we've asked that they indeed be prepared sooner so that we can look at them, because there are also a number of amendments being prepared that we'll be looking at before very long.

I was very interested in your comprehensive planning paragraph. The other items are important too, of course, and we've covered many of them in discussions, but your comprehensive planning recommendations here are very interesting, and I can see the advantage of them. How do you think they could be put in the bill to provide for them in—I was going to say, "in urban municipalities," but actually in rurals too?

**Mr Harrison:** In fact, it might even be more important for rural municipalities—

**Mr Eddy:** Yes.

**Mr Harrison:** —if an urban area was expanding and was taking over huge chunks of land. But since we're from an urban municipality, we were thinking of it from that point of view.

As I understand it, recommendation 47 in the commis-

sion's report would require, at the start of a secondary planning process or that type of large planning study, that a report would be written that would deal with the options and alternatives and discuss the advantages and disadvantages of each option, so that when the public is involved in the process they'll have the document before them which would outline all of the issues. They would be better informed, which would mean that the municipality would get better input from the citizens. So I think that's the way it could work.

**Mr Eddy:** It would certainly give members in the community a better opportunity to participate, wouldn't it, in the future of the municipality.

**Mr Harrison:** It does. The more information that you can give to the public and inform them as best as possible, the better input you'll get back.

**Mr Eddy:** I also note your statement that "we feel that the government must be bound by such policies, not just as private developers are," and you mention the Ministry of Municipal Affairs only and you feel quite strongly that the other ministries should be bound.

**Mr Harrison:** Yes.

**Mr Eddy:** We've heard this on several occasions as well.

**Mr Harrison:** I'm sure you have. I think it's important, especially now, to alleviate problems with the provincial treasury, that the government seems to be in some instances getting involved in land development deals. So if they're involved, I think they should have to abide by the same policies and the same provisions in the act as any private developer would have to.

**Mr Eddy:** Of course there's always the chance that the government will go around the act, and we've seen that on occasion as well. Thank you for your views.

**Mr McLean:** You talked with regard to the rights of appeal and that the person requesting the referral did not make oral submissions at a public meeting or written submissions to the council before the plan was adopted. You indicate that the individual could be away or not there. What do you think is the alternative of what's being proposed in the act—a longer period, or what?

**Mr Harrison:** Well, no. I think there are a number of provisions in the act currently, the way it is today, where you can dismiss appeals that are frivolous, vexatious or appeals only made for the purpose of delay. So I think there are enough grounds that you could dismiss an appeal if it had no legitimate planning grounds.

Now, in speaking to someone in the ministry when we were reviewing the bill, I understand that it was put in because you don't want to go through a long planning process and then think everything is satisfied and at the last minute someone comes out of the woodwork and says, "I'm not happy with it," and they want to appeal it.

But, again, even for those of us who really watch these issues, sometimes something gets very close to getting by us before we realize what's happened, because in some cases municipalities aren't as forthcoming with information as they should be. We just felt that that provision is a little too blunt. There are other ways that you could dismiss illegitimate appeals.

**Mr McLean:** You talked a fair bit about the Sewell commission and a lot of the recommendations, and an awful lot of them that were left out, and were hoping that they would be reconsidered and put back in. Well, they had all these recommendations from the Sewell commission before this legislation was drafted and they were not put in the legislation. I think the hope of having them put in now is pretty slim, in my opinion, when we look at the recommendations that Sewell made, and he was appointed by the government to bring in some recommendations.

I guess the area that concerns me most is with regard to some of the environmental policies that Mr Sewell had brought in with regard to some of the systems around our lakes, our septic tank systems that are perhaps not as up to date as they could be. In this bill there's nothing to say that they should be inspected or anything should be done about that. Does that concern you, that that's left out?

**Mr Harrison:** Yes. I can tell you that when we reviewed this bill we reviewed it, I guess you could say, mostly from an urban municipality's perspective and how we could use it or how it would affect us in our local dealings with municipalities. So we didn't touch on the septic tank issue.

**Mr McLean:** The other issue is, you talked about what you've been involved in and the environmental aspect on the Etobicoke strip and the Humber College. Are the Toronto Islands in wetlands?

**Mr Harrison:** I'm not sure.

**Mr McLean:** You're not too sure. But as an environmentalist in the city of Etobicoke, you would be able to look across pretty near at those islands, I would think.

**Interjection:** If they're not under water.

**Mr McLean:** If they're not under water, that's right.

**Mr Harrison:** We're a city of Etobicoke organization that deals with issues in the city of Etobicoke.

1420

**Mr McLean:** What other recommendations specifically should we be looking at with regard to intervenor funding? You touched on that. I think Mr Sewell had recommended that that be part of the bill. It's not in there. You strongly believe that it should be. What would you look at as a watered-down version of intervenor funding to have it accepted?

**Mr Harrison:** We would like to see the recommendation Sewell made put into the bill, and again I can understand that there's some concern that you'd be actually funding people who are fighting against you, but the same process, intervenor funding, is allowed under the Environmental Assessment Act and I think that there's a good process in place there to make sure that those funds are used in the proper way. As I understand it, groups have to submit a budget so that people know where the money's going to go before they give the money to them. In many cases, especially now that the environment is taking on the importance that it is in planning and development, that funding should also be available to—

**Mr McLean:** Who should the funding be approved by—the OMB?



**Mr Harrison:** Probably by the OMB. They'd have almost like a pre-hearing conference where the group, like us, would say, "These are the issues we're concerned about and we'd like to hire an expert to do this, this and this, and this is how much it would cost," and then they would decide.

**The Chair:** Thank you. Ms Harrington and then Ms Haeck.

**Ms Harrington:** Thank you, Mr Harrison, for coming. You certainly bring forward the citizens' groups' point of view. It echoes some of the concerns that I heard from my local citizens' group in the city of Niagara Falls when we were there a couple of weeks ago.

There seems to be a diversion, quite clearly, between what some of the municipal delegations are telling us, what the developer delegations are telling us and what your groups are telling us. You have brought forward, in my opinion, some very good points.

First of all you say that "to be consistent with" is important wording to have.

You also go on to say that the policy must apply to all provincial ministries and agencies, and I think that's something we are looking at.

Thirdly, you say that you have concern that a committee of adjustment does more than minor variances at times, and that this you believe should have a right of appeal. The intervenor funding is something that we discussed in the city of Niagara Falls as well, that certainly to be able to have citizens' rights heard, they do need to have expert testimony.

Lastly your concern about the removal of vegetation and trees is something that a lot of citizens' groups are telling us as well. So I thank you for that.

My question to you is, at the beginning of your presentation you said, "We are pleased with the streamlining of the planning process." Do you believe that this process that we are proposing here will make the province less competitive in an economic sense or more competitive, which is a concern of the developers?

**Mr Harrison:** I was watching this morning and I saw you ask that question of a number of people, so I was thinking you might ask me as well. I think what this bill does and what the commission tried to do was try to make things as clear as possible for everyone involved. In some of the things that we've been involved with, a number of times developers or whatever were saying, "Just tell us what the rule is or what you want," because it keeps changing on them, and if it's changing on them it's changing on us too, and we'd like to know where we stand as well. So I think the policy statements along with the amendments to the act in many cases clear up those issues.

So for example, in areas where it says there's no possibility of development, like in significant ravines and all these other things, then no one is fighting about that issue because everyone knows that's off the table and you just talk about what's left. I think it's going to take a while for municipalities doing their official plans to decide what the significant ravines etc are that are untouchable, but once that is done everyone will know

where everyone stands, and it would allow the planning process to work in a much quicker way because everyone understands the rules.

**Ms Harrington:** Thank you. Ms Haeck has a question.

**Ms Haeck:** Good. I wasn't sure if I had enough time. I too want to thank you for your comments with regard to the vegetation and trees because it is very much a concern for folks in Niagara. But your last comment relating to public notice is one that a number of ratepayer groups in my area of the province have been very, very concerned about, particularly getting even copies of agendas of meetings. Regular agendas of council meetings are sometimes harder to get a hold of than you would necessarily imagine.

Do you feel that it would be important for residents to have as full information as possible? Public participation is something I feel very strongly about and I think that when there is an application on the part of a developer or even at times on the part of the municipality, it's important for the residents of the particular area to know exactly what's on the table and what those impacts are going to mean. How do you feel about that yourself?

**Mr Harrison:** I think it's very important, and as I said earlier, the more informed you can make the public, the better the response will be from them; it'll be an informed opinion. In my experience dealing with the city of Etobicoke, sometimes you'll get a staff report which will have an application in it. You read the report and you go through it all and then you show up at the public meeting and the applicant has changed the application. So that means all the comments that you worked on are now no longer relevant and no one knows what the new application is. So basically it's a total waste of time and effort on behalf of the citizens and the committee. In many cases, there are people who are heads of citizens' groups who know this process and do the best they can, but the people who might think that they might want to get involved in something think: "This is ridiculous. Why am I going to all this effort?" So then people don't get themselves involved as they would. So no, I think it's critical.

**Ms Haeck:** You're really bearing a lot of concerns on the part of my residents. Thank you for your remarks.

**The Chair:** Mr Harrison, thank you for coming and thank you for participating in these hearings.

We invite the regional municipality of York. The Ontario Real Estate Association. We will have to recess for a short while until either of these deputants arrives.

*The committee recessed from 1428 to 1436.*

REGIONAL MUNICIPALITY OF YORK

**The Acting Chair (Ms Christel Haeck):** Ladies and gentlemen, I'd like to call the standing committee on the administration of justice back to order, and I believe we have the regional municipality of York before us. I am told that Mr Craig MacFarlane will be making the presentation. I notice a look of doubt on the presenter's face. I would hope you would introduce yourself for the purposes of Hansard and indicate who will be making the bulk of the presentation. Do you wish to begin?

**Mr Craig MacFarlane:** Yes, thank you, Madam Chair. My name is Craig MacFarlane, York regional solicitor, and with me is Mr John Livey, the region's commissioner of planning. Mr Livey and I will be splitting the presentation. Mr Livey will go first and provide a submission on the planning aspects of Bill 163, to be followed by my submissions in connection with the legislation changes on the conflict of interest and Local Government Disclosure of Interest Act provisions.

**The Acting Chair:** Just before you continue, would you introduce the third member of your party. My name isn't Rosario Marchese, by the way. I'm pinch-hitting for him, but if you would please introduce yourselves for the purposes of Hansard so we all know who everyone is.

**Mr John Livey:** To my immediate left is Al Saunders. He's one of the members of the planning department staff and has prepared some of the reports before you today.

If I could, can we have the indulgence of the committee and submit the report that we've taken through our planning committee and on through council?

**The Acting Chair:** Are these the documents?

**Mr Livey:** Yes. I guess they have been passed out.

**The Acting Chair:** All members now have copies. The clerk has distributed them. It looks like I have two copies of the same thing. No, I have a legal planning and a planning department. Which one are you starting with?

**Mr Livey:** I will speak to the planning department submission.

**The Acting Chair:** Very good.

**Mr Livey:** We have participated thoroughly in this process and we commend the province for undertaking the Planning Act reform initiative. The council of the regional municipality of York has considered five reports from the planning department and the solicitor on this particular matter of the Sewell commission and the bill. Our council and our inhabitants are supportive of the bill. We feel that it's important that there be a clear definition of the provincial interest, that there be a clarification of upper-tier and lower-tier interests, and we believe that the legislation is good for a start in that connection.

For the information of the committee, York region adopted its first regional official plan on April 14 of this year and has that plan before the minister for his consideration. We're also very active on a number of fronts, important of which are the review to the development charges bylaw that we're undertaking right now, and the idea that—it's actually in a report that has gone through council in May, which was to adopt the idea of regional transit in principle.

So you have a region of 500,000 people, which we expect to be about a million people in 20 years time, actively interested in shaping its growth under this new legislation, and for us it is singularly important that the legislation reflect the needs of a growing, large urban community and the very difficult pressures that we face on a number of environmental, transportation and social issues in our region.

We want to ensure that the bill leads to an expeditious and timely planning process. I think that's a laudable

goal. It certainly was the object of much attention through the Sewell commission and is I believe the genuine intention of the legislation as drafted. It's important that there be timely planning decisions. The planning process typically takes many years to bring a major change about. If there's a major change to an official plan at the regional or local level, it takes many years under the current legislation, and it takes too long, in our opinion, under the present legislation unfortunately.

So we caution the committee on enshrining in the legislation too many procedural issues. This is a general comment, but I want you to reflect on the experience that we as the province of Ontario and the region have had with the Environmental Assessment Act and the ongoing review of that act to make it more efficient, but inherently buried in that act are a number of procedural requirements. If you recall the hearings on Ontario Hydro in eastern Ontario Hydro and the western Ontario Hydro hearings, they were delayed significantly, for years in fact, at horrendous cost to Hydro and to the applicants and to a number of people, over procedural issues, over notice and whether or not the actual act was being adhered to strictly. So every additional procedural matter that is included in the bill I suggest you ought to reflect on long and hard in the sense that a third party may use that to their advantage in delaying an application and we're very concerned about that.

Our other concern builds on this matter, and that is "consistent with." It is our submission and has been in all our reports that the words "consistent with" represent an overly prescriptive solution to not a particularly apparent problem. There is anecdotal evidence to suggest there have been some problems with "have regard to." I ask that you ask staff for a full and complete list of those cases where "have regard to" has been deemed to be deficient to see whether or not in fact "have regard to"—which in my opinion has been working very well, that the Ontario Municipal Board has had a full and careful consideration of the implications of policy statements in the "have regard to" provision in the current act. I ask that you ask for some documentary evidence of that not working under the present legislation, because I think what's happened is "consistent with" is being used as a substitute, maybe not explicitly, but implicitly, for a feeling that there may be some potential abuse in the future.

In my opinion, what you want to have in this act is a reasonable set of conditions to make sure reasonable tests are in place, and I am fully confident that the Ontario Municipal Board is capable of applying the test of a reasonable man to any particular planning circumstance and "have regard to" is sufficient.

When you use "consistent with," I think you're into the whole ambit of third-party appeals, some third person, not people who are familiar with the act, not people who are well intentioned, but people who are intent upon some sort of delay or some sort of other end and are going to use "consistent with" as an excuse to achieve their ends in a very capricious fashion.

The possibility of third-party abuse of "consistent with" in my mind is significant enough to support the



recommendation that AMO has made, and that is to add the words "consistent with the spirit and intent of" policy statements. I think that would put us in good stead to make sure the Ontario Municipal Board takes into consideration and gives full consideration to the policy statements in any decisions that they may render without leaving us open to putting all this into the courts and being challenged on a regular basis by people who want to use "consistent with" in a rather arbitrary way. My feeling is, "consistent with" means we are going to a more arbitrary and legalistic circumstance rather than a more reasonable man test situation, which I believe is consistent with the words "have regard to." So that is our concern with "consistent with."

I'm not going to go through all the other comments, but I do want to dwell on just a couple that you might be considering right now.

One has to do with the trees issue. I know I'm going from forest to trees, but we believe the bill is helpful in grading, filling and dumping, but the question of vegetative removal has come to a point in the history of this province that a more complete set of legislative tools should be available to municipalities in their bylaws. I commend to you the bylaw the city of Toronto enacts in its ravines. It has worked particularly well. It was subject to the allegation when it was first enacted under private legislation that it would be open to an awful lot of abuse, but it's worked reasonably well I and would urge you to look at that, or the equivalent that's recommended by the final report of the Tree Bylaws Advisory Committee, as ways of ensuring that we don't have wanton or in the middle of the night cutting of trees, removal of vegetation, simply to further a planning application. I don't think anyone would support that kind of action, but it happens in our region and it happens, I know, in other places in the province.

I'm going to just close by indicating to you that we've made some procedural suggestions on a number of things. On the "consistent with" argument, back to that for one second, if you're going to apply "consistent with" as it stands, please apply it to all provincial ministries and Ontario Hydro. A double standard of "have regard to" for provincial ministries and "consistent with" for municipalities would be, we think, completely unfair, and I think it highlights the nature and the importance of dealing with that issue fully. If the ministries are reluctant to live by "consistent with," why would one not expect municipalities to be feeling the same apprehensions?

Again, Ontario Hydro has enjoyed a relatively free ride in the 1983 act and is doing so again. The logic of it is not apparent.

Finally, I'd like to say that York region is very supportive of empowering municipalities through this new bill, very encouraged that the new bill is environmentally friendly, that it provides protection for the environment, and hopeful that the new bill as amended will streamline rather than further encumber the planning process. We believe the timing deadlines in that regard are important and should be supported. We're very pleased that the committee is moving expeditiously and will be reporting back. We're available if you need us. If you have any

specific questions or anything that might be germane to York region that we can help you with, we'd be very happy to provide you with any information or materials. Again, we're encouraged that we are able to see the light at the end of the tunnel on Planning Act reform.

Thank you very much. I'm open to any questions you might have, but I think Craig will go first and maybe we'll do the questions at the end.

**Mr MacFarlane:** I'll deal with the new legislation embodied in the Local Government Disclosure of Interest Act. There are about nine points of a primarily technical nature which we believe ought to be amended and addressed in a revised bill.

First of all, there's a definition of interest in the draft bill which is not consistently used. There is a use of interest and a separate concept of pecuniary interest. The proposed definition that we're submitting is that interest be defined to include both a direct and indirect pecuniary interest of a member and a pecuniary interest deemed to be that of a member so that you have a consistent definition throughout the bill.

**1450**

Secondly, one provision that exists in the existing Municipal Conflict of Interest Act is a saving provision. If there is inadvertence or a clear error of judgement of a member, then a judge now has the ability to avoid sanctions. However, there is no saving provision in Bill 163 for inadvertence of a member of council and the judge has no discretion, or in this situation, the legislation provides for a mandatory suspension of a member without pay. In our submission, there should be a continuation of the saving provision that now exists in subsection 10(2) of the Municipal Conflict of Interest Act, the current legislation.

A third point is, when does a member have to leave a meeting? The draft bill does not give us any indication as to whether or not a member is permitted to stay in the council chamber during the deliberations or must leave the room. The legislation talks merely of the member "immediately" having to leave the meeting. We would like that clarified in the next draft.

A fourth point is that subsection 4(1)(e) of Bill 163 be amended to allow the completion and filing of the written disclosure both during the meeting and immediately after. Currently, there is the proposal just to have the completion and filing of the disclosure after the meeting. It would be a lot more convenient to members if the disclosure statement could be done during the meeting itself.

The commissioner who's appointed under the new legislation has an obligation to do a report where there is a complaint. There is nothing in the legislation that tells us what the report is. Is it a public document? Does it have to include written reasons? We are recommending clarification of that in our submission.

The new provision contained in proposed subsection 55(9) of the Municipal Act in Bill 163 states that the meeting of council "shall not be closed during the taking of a vote." Frequently in closed sessions there are directions given to staff as to how to complete sensitive

negotiations or litigation strategy, and for those reasons we submit that the result of the vote not be made public until either the finalization of the transaction or the specific step in the litigation has been completed.

One minor point is that in the property disposition provisions, the appraisal provisions are required to have an undefined level of property appraisal for the disposition of municipal property. In our submission, we recommend that an appraisal or letter of opinion be a satisfactory level of appraisal. Appraisals are very expensive, and in the case of dispositions of a lot of municipal property, there may not be the need for a full appraisal.

Another point, the final point I'd like to make, is that there is now a requirement proposed that every council and local board establish and maintain a public register listing describing the property owned and leased by the municipality or local board. There is a tremendous range of property that is owned by municipalities, everything from one-foot reserves to easements, and the cost of having to record these wide-ranging interests in real property would be significant. Perhaps the solution would be to prescribe a threshold of property size, interest or monetary amount to be included in that register, but not to cover the full range of all types of real estate interest, which is pretty sweeping legislation.

In conclusion, the region supports the general thrust and intent of the legislation. It brings the disclosure provisions more in line with the provincial requirements. However, a caveat is that there be at least a saving provision carried forth from the previous legislation, and the other technical changes that we're submitting. Thank you.

**Mr McLean:** Welcome to the committee. I appreciate your brief. With regard to the written disclosure, I also see in the act that if a member is absent from a meeting in which he or she has a pecuniary interest and if at the next meeting, then or soon thereafter, they've got to file the disclosure of what interest they had, sometimes that may be difficult, if you're not at a meeting and not aware of what's taken place. From what I'm reading in the act, that interest has to be disclosed as soon after, in writing.

**Mr MacFarlane:** That's a very good point. I think it would be appropriate to have the requirement for disclosure in that case tied to the attendance at a meeting.

**Mr McLean:** Would your interpretation of this act also be that any school board representative would have to do the same, that they would declare orally a conflict immediately after the meeting, and would have to then fill out a form indicating what their pecuniary interest is?

**Mr MacFarlane:** Yes.

**Mr McLean:** It seems to be a little tougher than what some others have, in my estimation.

There's something under the planning I have a question about. It has to do with the regulations for cutting trees. Most counties and regions do have bylaws with regard to tree-cutting, but do the larger Metro areas have the same type?

**Mr Livey:** Yes, York region has a bylaw under the Trees Act. The difficulty with the bylaw under the Trees Act is that its primarily a bylaw that was drafted with

forestry in mind, really intended to try and manage forests for potential harvest.

**Mr McLean:** I remember reading in here the under two acres. Is that where yours would come in?

**Mr Livey:** Ours come in over that.

**Mr McLean:** Okay. But I read something in the brief—I forget what page it was on, but I do remember reading it.

**Mr Livey:** It's page 7.

**Mr McLean:** Two acres or less. Is that Metropolitan Toronto?

**Mr Livey:** Yes. The city of Toronto has a local bylaw that was empowered by special legislation in the late 1970s or early 1980s which allows the control of vegetation removal, tree removal, in the ravines. The ravines of Metropolitan Toronto are protected by a piece of special legislation and it makes sure that you don't have extensions or enlargements of existing lots going down into the ravines on city property or Metro property or MTRCA property, or that vegetation is removed without a permit. There is a system for permitting it, and some permits go ahead and some don't, depending on the nature of the resource that's being protected.

Our problem in York region is with singular stands of heritage trees. We have very few forest and tree resources left in the region; what agriculture hasn't taken, much of our urbanization has. So we're very concerned about the difficult transition the development community is going through right now in understanding that it is an important resource that the local people want protected. They see it as an impediment to their development, and they'll go in and clean the trees out on us.

1500

**Mr Drummond White (Durham Centre):** Your official plan was long in the making. My wife was an employee of the region some 15, 16 years ago and participated in that process at that time. You finally got to the conclusion, and I understand it's been reasonably favourably received at the ministry.

In the final stages, during the last six, nine, 10 months, many of the materials in this bill were already effectively governmental policy. Did they in any way slow up your process or impede it, or did they in some ways perhaps, if anything, facilitate it?

**Mr Livey:** Our latest version—this is the third version of the region's plan—was initiated just a little less than two years ago, in the fall of 1992. The province has supported that effort. The Ministry of Municipal Affairs has provided us with grants and assistance on it. We were involved as intensively as any region with the Sewell commission: Our chairman sat on the working committees; we were on working committees as staff. The spirit and the objects of that exercise and the legislation are consistent with what we have in our plan. So in many respects, this York region plan is an example of a plan that would be enacted, I believe, by municipalities post the third reading of this bill, so it's lockstep with the bill in that regard. I think it's understandable, given that we've had such a high level of public consultation on your process and on the York region process. We've



inevitably had to be understanding of the provincial objectives, and vice versa of the regional objectives, at this current time.

**Ms Harrington:** First of all, thank you for support of this legislation, and we do understand what great pressures the region of York faces at this time. I have two brief comments.

First of all, the phrase "to be consistent with": I am told by some experts that it is much easier to define for a board like the Ontario Municipal Board than "have regard to," which took many years to get a real handle on.

Second is with regard your concern about the list of properties a municipality owns. Five years ago when I chaired the mayor's committee on housing, we asked the CEO for a list of all the municipal properties with regard to affordable housing sites, and you got one-foot strips along various places. I would agree with you that that doesn't make sense, to have every detail, but just the major pieces.

**Mr Grandmaître:** On definitions and also on regulations: Maybe my question should be directed to the parliamentary assistant, Madam Chair. I know there is a committee in place, the advisory task force on implementation of regulations and also definitions, if I'm not mistaken. This committee is in place, right?

**Mr Hayes:** Yes.

**Mr Grandmaître:** It is working on regulations?

**Mr Hayes:** Yes, it is, on the guidelines; on the implementation of the regulations, yes.

**Mr Grandmaître:** So they're working on the regulations?

**Mr Hayes:** The guidelines. I'm sorry: the guidelines.

**Mr Grandmaître:** Guidelines or regulations?

**Mr Hayes:** Do you know specifically what they're doing, Philip?

**Mr McKinstry:** The task force which AMO sits on and which therefore York region is in some way represented on is working on the implementation guidelines for the policy statements. As well as that, they are going to be reviewing all the regulations as they are prepared and developed.

**Mr Grandmaître:** So this committee has access to all those definitions they're referring to, the definitions that aren't clear, and they also have a list of regulations in order to implement this legislation. Otherwise, they're working with an empty tool kit, right?

**Mr McKinstry:** The committee certainly has a list of regulations, but they don't have the regulations yet because they are not prepared.

**Mr Hayes:** Because they're being worked on.

**Mr McKinstry:** As the regulations are prepared, they will be brought before the task force.

**Mr Grandmaître:** Then how can we call this an implementation task force if they don't have all the tools in front of them, the regulations and the definitions and all of these great things? How can they work on the implementation of this bill?

**Mr McKinstry:** The committee is working through all of the implementation activities for Bill 163. Part of that is the implementation of the policy statements, but the other part will be the implementation of the regulations. The committee is working as well as it can through all this material, and it's being brought forward to it as it's available.

**Mr Grandmaître:** So it's a two-tier implementation process.

**The Acting Chair:** Mr Grandmaître, I'm sorry, but we do have other deputants who wish to come before us.

I want to thank the deputants for coming. Before you leave, Mr Hayes has a quick clarification.

**Mr Hayes:** On the question about disclosure and when a councillor, for example, would have to leave the chambers, it says immediately. That hasn't changed. It's still the same rules as under the existing conflict of interest act. It's already there.

**Mr MacFarlane:** It would be appropriate, in our view, that that be clarified. It may be there now, but now that we're reviewing the legislation—

**Mr Hayes:** Immediately. Forthwith, if you like. I'll put it that way.

**The Acting Chair:** Thank you to the deputants. Any other of these comments could be talked about with the deputants outside, or the ministry staff can definitely work with the deputation.

#### ONTARIO REAL ESTATE ASSOCIATION

**The Acting Chair:** I now call the Ontario Real Estate Association, Ross Godsoe, Jim Flood and Rose Leroux. Please introduce yourself—I hope you'll take the opportunity to introduce the entire panel—then please begin your presentation.

**Mr Ross Godsoe:** Good afternoon, Madam Chairman and members of the committee. My name is Ross Godsoe, and I'm the president of the Ontario Real Estate Association. With me this afternoon are Mrs Rose Leroux, who is our chairman of the political affairs committee, and Mr James Flood, who is the association's director of government relations.

Before beginning our substantive comments, I'd like to provide a brief background of OREA and a summary of our association's activities in the planning reform process.

Our mandate includes working with government to increase consumer protection through improved education and business standards for the real estate profession, enhancing the opportunity for all Ontarians to own and enjoy real estate and protecting the rights of property owners in the province. OREA has two main areas of concern with Bill 163 as presently drafted.

Our first concern relates to the effect Bill 163 will have on private property rights. It is our belief that the rights associated with property ownership constitute one of the most important foundations of a democratic society and are the single most important principle underlining our free enterprise economic structure.

The importance of property rights in terms of economic growth and social stability were recognized over 200 years ago in the United States, which enshrined them

into its founding constitution. As you know, last year the state of Russia also enshrined property rights in its first true democratic constitution. Russians and Americans understand that property rights promote social stability and economic growth. Unfortunately, what seems to be so important to people in those parts of the world seems to be out of fashion in the province of Ontario.

In this province, the growth of government at all levels has led to more and more regulation, including regulation of private property. The most recent excuse for restricting property rights is to save the environment. Unfortunately, some environmental groups claiming to represent the public interest have found an audience, and often a partner, with governments that believe property owners can't be trusted to conserve and protect the property they own, often purchased with their life's savings.

The combination of regulations and anti-development environmental groups has resulted in a growing number of property rights violations, justified in the name of preserving the environment. Unfortunately, we believe Bill 163 perpetuates the myth that environmental protection can only be achieved by restricting private property rights.

In an effort to restore a balance, we asked both the Sewell commission and the Minister of Municipal Affairs to acknowledge individual property rights when amending the planning process. Specifically, we suggested that the purpose section of any new legislation include a clause recognizing legitimate rights of property owners. We were politely ignored.

#### 1510

Today, we ask that section 4 of Bill 163, which inserts a purpose clause in the Planning Act, be amended to add a section acknowledging the government's responsibility to respect the property rights of its citizens.

If refusal to include such a clause can be considered an error of omission, section 20 of Bill 163 can be considered a deliberate violation of property rights that has the potential to affect every property owner in this province. Why? Because section 20 uses subjective words like "significant" to outlaw all forms of development or land use in any "significant natural corridor, feature or area." That section alone can be interpreted to include every square foot of the province of Ontario.

If you bought a cottage lot, for example, on the shore of a lake that some bureaucrat subsequently decides is significant, not only would you not be allowed to build your cottage, you won't even be allowed to camp overnight on your own land. That isn't environmental protection, it's legislative theft.

OREA looks to the members of this committee to protect property owners from this type of treatment, not endorse it. Good legislation should provide for balance and fairness.

OREA supports the legitimate goal of environmental protection, but this goal needs to be balanced against the legitimate rights of property owners. Fairness demands that if individual rights are taken away in the public good, public funds should be used to compensate those whose rights were taken. That is simply fair.

It is our hope that this committee shares that view and that it will amend Bill 163 to protect the citizens from those who would restrict property rights. Those who saved, bought, planted, worked and developed land have no interest in destroying it. They are the true stewards of the land, not special-interest groups who seek to impose their own values by wrapping themselves in the cloak of environmental protection.

**Mrs Rose Leroux:** Our second concern relates to the effect that Bill 163 will have on the cost of housing.

When the then Minister of Municipal Affairs, Mr Dave Cooke, announced the appointment of a provincial facilitator, he stated that the planning approvals process did not work, that it was too long, too confusing and was costing Ontario jobs. We couldn't agree more.

Late last year, the current Minister of Municipal Affairs, the Honourable Ed Philip, identified one of the goals for the changes being introduced as streamlining the approvals process. The minister justified that goal by saying: "We cannot continue to support a costly and inefficient land use planning system. The impact of delayed decisions amounts to billions of dollars of delayed economic activity and potential employment." Once again, we couldn't agree more.

As Ross mentioned earlier, one of our mandates includes promoting policies and programs that enhance the opportunity for all Ontarians to own and enjoy real estate. For most of us, that means owning our own home. For too many Ontarians, the cost of a home is beyond their financial reach.

The land use approvals process, with its red tape, duplication and bureaucracy, adds thousands of dollars to the cost of housing in Ontario. We don't know exactly how much—it's difficult to quantify—but the approvals process and taxes are estimated to make up about 25% of the cost of new housing. Everyone agrees that simplifying and speeding up the approvals process will lead to more affordable housing in Ontario.

We believe this committee should act boldly to cut the red tape, streamline the process and thereby lower the cost of housing. Unfortunately, we do not believe that Bill 163 will provide more affordable housing, as presently drafted. Let me briefly outline a few problems.

First, section 9 of Bill 163 provides for a new integrated planning and environmental approvals process. While we applaud the idea behind this section, the wording states only that the materials developed in the preparation of the plan "may be considered" under the Environmental Assessment Act. We would recommend the wording be amended to read "shall be considered." This would eliminate ambiguity, discourage duplication and could well save months in completing prescribed planning requirements.

Second, section 28 of Bill 163, subsection 51(14), introduces a new series of public meetings "if required by regulation." The regulations for Bill 163, as we have just heard, have not yet been drafted, so it's difficult to comment. But we do not understand why public meetings should be required for consideration of a plan of subdivision application. Proposals for subdivision have already



been subjected to public scrutiny at both the official plan and the zoning stages. A third set of public meetings is simply not necessary. They will only create a delay and thereby increase costs. The current process provides ample opportunity for public consultation and should be retained.

Third, section 28 of Bill 163 sets out the process for dealing with changes to a plan of subdivision, proposed new Planning Act, subsections 51(34), (35), (36) and (37). At the present time, changes involve only the applicant, the agency involved in the condition, the municipality and the approval authority.

Under Bill 163, that process will be expanded to provide that notice of each and every change be given to all interested persons and public agencies; they then being given a 30-day opportunity to request referral to the Ontario Municipal Board. We predict that attempting to comply with this proposed new subsection of the Planning Act will lead to administrative chaos and unnecessary delay in the approvals process. The current system should be retained.

Fourth, Bill 163 provides that upper-tier municipalities such as counties and regions may be granted authority for subdivision approvals, as well as local official plans and zoning bylaw amendments. We believe this section should be expanded to include delegating authority to upper-tier planning staff where qualified. In some areas of the province—for example, the regional municipality of Ottawa-Carleton—this delegation to staff is in place now and works well. Unfortunately, Bill 163 is silent on this subject.

If the province is really serious about streamlining, including an amendment to allow delegation to qualified staff would be an excellent way to proceed. Delegating approval authority in instances where applications are undisputed can save weeks of time and therefore thousands of dollars. The example of Ottawa-Carleton should be emulated and not prohibited.

Fifth, we believe further delegation of approval authority for condominiums to capable lower-tier municipalities would be another positive step. Condominium approvals are largely a process of site plan review. Since that process is already within the purview of lower-tier municipalities, our recommendation for further delegation would make sense.

By way of closing remarks, the Ontario Real Estate Association wants to congratulate the government on launching the planning reform initiative. As they and we have discovered, it is a massive undertaking encompassing complex issues and interrelated issues.

We urge this committee and the government to take the time to get it right. The planning process affects all of us and it's important the legislation that finally results at the end of the day is fair, balanced and workable. That concludes our comments. We'd be pleased to answer any questions.

**The Acting Chair:** We have eight minutes per caucus. The government caucus is first.

**Mr White:** I very much appreciated your presentation. There were, as you mentioned, a couple of different

points. I think some of the technical points that you brought up in terms of the planning process are very valid and might well bear some consideration.

**1520**

I was a little curious about another issue. When we were talking about the issue of private property rights, and that's an issue that's been discussed at some length before the committee, the issue of a Trees Act, which might have been a permissive part of this legislation and has been proposed—that would effectively give some control to a regional or a local municipality to prohibit the cutting down of trees, the removal of vegetation on people's private property, whether it's a woodlot or their own smaller lot in a subdivision area. Do you have any comments on that issue?

**Mr Godsoe:** Just before maybe Mr Flood goes ahead—with regard to the property right issue, you're absolutely right. We've been working on this issue, by God, for years and years and years, as long as I can remember, probably back in the late 1970s, early 1980s. Obviously we've made a lot of presentations before many governments of the day, and objectively we hope that you folks will listen today and maybe it'll all start here.

As far as the Trees Act is concerned, I'm not quite as familiar with that. Jim, maybe you want to comment on that.

**Mr James Flood:** About all I can suggest to you is that we did not support the proposed amendments to the Trees Act that the government brought forward some six to eight months ago now, I guess. I don't know that the government still supports the proposals that it brought forward. They have not seen fit to bring that legislation forward. We might, at the present time, have the position that there is adequate protection, especially in rural Ontario, and that the proposed legislation the government advanced isn't necessary at the present time.

**Mrs Leroux:** I would also like to make a comment there. I feel that for most property owners, trees are valuable assets to their property and add value to the property, so you don't under normal circumstances find people removing trees without just cause. I would like to concur that, in most instances, I think the legislation that is in place would adequately protect trees.

The other thing I would like to point out is the fact that what we are advocating is a balance, a balance of private property rights and public interest. We realize that in some instances private property rights have to be looked at for the greater good of the whole, but we feel that, in many instances, that is not done. When it does have to be done, we would also stress that those individuals whose property is in some way either confiscated or jeopardized should be fairly compensated. That is really the point we would like to make, that we advocate a balance.

**The Chair:** Ms Harrington, there's time for a quick question, because we don't have as much time as we thought we did.

**Ms Harrington:** I just had to respond to your comment with regard to Russians and Americans understanding value of property rights more so than here. Certainly,

we have a much more important role for our future and our environment and our natural resources than I think either Americans or Russians have, and it's something that all people I believe in Canada value. Public interest and collective rights, I think, people see as overarching of property rights for the good of our children and for the good of this planet. I just want to make that statement for the record.

Secondly, I believe it's very important that we ensure the involvement of our citizens in the planning process. You may wish to comment on that.

**Mr Flood:** We agree with you.

**Mr Grandmaître:** On delegating authority to upper-tier levels of government, you say on page 14 that "upper-tier municipalities such as counties and regions may be granted authority for subdivision approvals" and so on and so forth. Counties and regions—you know that in Bill 163 it exempts Metro from having the same power of authority. Do you agree with Bill 163 that Metro should be exempt?

**Mr Flood:** I guess if you want me to take a whack at it, the short answer is, in trying to analyse the legislation, we did not look at it from the perspective of Metropolitan Toronto. It's my understanding that Metropolitan Toronto does not agree, but we did not develop a position on it.

**Mr Grandmaître:** Do you agree that all regions and counties should be treated equally and fairly?

**Mr Flood:** I think it's pretty difficult to disagree with that statement.

**Mr Grandmaître:** I was glad to see Ms Leroux mention that in Ottawa-Carleton this delegation to staff is in place and it works well. But being from the Ottawa-Carleton area, I am told that it doesn't save any time and it doesn't save any money. It's very little improvement when that power was delegated to Ottawa-Carleton.

**Mrs Leroux:** Then we're getting conflicting reports.

**Mr Grandmaître:** Is that right?

**Mr Flood:** The people we talked to, and I suspect particularly the home builders and the developers, in the Ottawa-Carleton area might suggest otherwise, that allowing staff the ability to approve relatively straightforward uncontested applications does speed up the process and does save some time.

**Mr Grandmaître:** Thus saves them money if it speeds up the process. I'm glad to hear this and I'll check my source of information.

**Mr McLean:** I see you've made two separate briefs to the Sewell commission. You made a third response to the Minister of Municipal Affairs draft policy statements last November and you made a fourth in response to the consultation paper released last December entitled *A New Approach to Land Use Planning*.

I see where the Sewell commission—the Minister of Municipal Affairs acknowledged individual property rights when amending. They were asked to amend it so that property rights would be in the planning process. I understand you were both politely ignored on both of those occasions. Would I be correct in stating that?

**Mr Eddy:** Being ignored is not polite.

**Mr McLean:** The other issue is with regard to the word "significant," with regard to a cottage lot on a shore of a lake. What definition do you believe should be in place instead of the word "significant"?

**Mr Godsoe:** I think the word "significant" is very broad and the interpretation of it leaves a lot to be discussed. I think it should be more concise and more meaningful to explain exactly what we're talking about.

**Mr Flood:** It would be helpful, in our opinion, if perhaps somebody like the implementation committee could go back and revisit some of the wording that's in some of the clauses to take some of the ambiguity out of the legislation, and how to define a term like "significant" would be a good place for them to start.

**Mr McLean:** We would like to know what the regulations are going to be, and once we had an idea what they were going to be, we could determine what's going to be the wording in those. I understand the facilitator is working on some of those regulations now, and we will probably never see it until after the bill is passed.

The environmental impact study: what concerns do you have with that with regard to—now, they tell me it's not in the bill, that you could have a minor variance and you don't have to go through an environmental impact study. Is that your interpretation of the legislation?

**Mr Flood:** We did not address the question.

**Mr McLean:** You did not address minor variances.

**Mr Flood:** No, as you mentioned, it's not in the legislation.

**Mr McLean:** It's not in the legislation. Thank you for appearing today, and I can tell you that when you talk about the provincial facilitator and stated that the planning approvals process did not work, it certainly leaves some room for consideration of what's going to be in the regulations he brings in. Thank you for appearing.

**The Chair:** We thank you for coming and thank you for the presentation you made to this committee.

**Mr Hayes:** Comments?

**The Chair:** I'm sorry. Mr Hayes wants to make some clarifications.

**Mr Hayes:** Yes, there were two concerns that you had, and the one in particular was delegating the authority to the upper-tier planning staff. That is being dealt with. We've circulated an amendment to deal with that particular issue and that will be part of the act.

**Mr Flood:** Wonderful. Speedy service, thank you.

**Mr Hayes:** No problem. Actually, we just wrote it up after you brought it up.

1530

**Mr Flood:** We understand perfectly.

**Mr Hayes:** Your other concern was that delegation of approval authority for condominiums to capable lower-tier municipalities would be another positive step. Actually, the minister does have the authority to do that now and it is in section 4 of the current act. It's already in there.

**The Chair:** Thank you.



## MUNICIPALITY OF METROPOLITAN TORONTO

**The Chair:** We invite the municipality of Metropolitan Toronto, councillor Howard Moscoe and Mr John Gartner, commissioner of planning?

**Mr John Gartner:** Yes. Chairman Tonks is somewhere between our offices and here.

**The Chair:** All right, very well. Welcome to you both.

**Mr Gartner:** And he's not being held up by taxicabs.

**The Chair:** It's okay. I think, Mr Moscoe, you're probably very familiar with this process so you know that if you want the members to ask you some questions, leave as much time as you can for them to do so. Please begin any time you're ready.

**Mr Gartner:** My name is John Gartner and I'm the commissioner of planning for Metropolitan Toronto. On my left is Councillor Howard Moscoe, who is the chair of our economic development and planning committee, and hopefully on my right will be Chairman Alan Tonks, who's the chairman of Metro council. In his absence, I will make the portion of the presentation that he otherwise would have done.

The presentation you've got before you today is what is being represented by the three of us, but also attached to the package that you're receiving is the actual council report and recommendations that were approved by Metro council, which is a longer version. We have intentionally kept our comments in a very brief fashion, unlike some of the other briefs that you've received, and tried to focus on the things that are most important to Metropolitan Toronto and specifically to our level of government.

By way of introduction, I'd like to commend the province on its prompt response to the final report of the Sewell commission and on its efforts to implement the reforms to Ontario's land use planning system, as well as its adherence to the three basic reform objectives of empowering municipalities, protecting the environment and streamlining the planning process. All these objectives are laudable and we obviously at Metro, both council and staff, commend the province for these actions.

On June 1, 1994, Metro council adopted a new official plan, the thrust of which is consistent with the province's planning reforms under consideration today.

While it's in a prepublication form, a limited number of these have been given to your assistants. We will, as soon as we receive them from the publisher, send the requisite 30 and as many as the members of this committee and members of government would wish after that. It's unfortunate we just have not received the document for the full circulation.

The new plan has anticipated the policy direction of the province—it was developed in consultation with the provincial officials as well as local municipal officials—and is generally in keeping with the new legislation and its policy statements as we understand them. There are five areas of concern that we would like to bring forward to you today, however.

The first and probably most important in terms of Metro's relationship both with the province, the other

regional municipalities and our own municipalities is something which has at least twice today been raised—in fact three times that I'm aware of—and on several other occasions has been and will be raised at these hearings. It's the matter related to either the delegation under the current system or the assignment under the future system of official plan approval powers for local area municipalities.

It's Metro's strongly felt position that the treatment and the isolation of Metro relative to the other regions in Ontario, by reason of the fact that it was the first, the largest and arguably the most sophisticated region, is counter to the province's stated objectives of empowering municipalities, and it's also counterintuitive.

The second is the denial to Metro of some of the tools necessary to effectively implement the policy directions contained in the planning reform package, and thereby undermining some of the province's objectives potentially, particularly in the area of environmental protection and the streamlining of the planning process. This item was referred to in the previous presentation, actually.

The third is the undue emphasis on greenfield development rather than the redevelopment and intensification of existing builtup areas, which has resulted in insufficient attention being paid to the challenges facing the urbanized communities. The situation here is that in Ontario, by reason of the fact that—Chairman Tonks has just arrived—we are a province that now has a considerable history measured in centuries rather than in decades. A large portion of the province—in fact approximately 70% within the regions—is urbanized. In our reading of the legislation, while it deals with greenfields and new development areas, it really misses an opportunity, which we hope will be taken up in subsequent investigations, of dealing with what happens in second-generation development when an urban area is going through a second stage of urbanization, which is in fact what's happening in Metro Toronto.

The fourth item is potential coordination problems between provincial ministries frustrating efforts to streamline the planning process. We'll make specific reference to each of these items in more detail in the presentations of Chairman Tonks and Councillor Moscoe.

The fifth is the potential for delay in approval of Metro's new official plan, which would have the effect of impeding implementation of the proposed reforms by reason of the fact that it was developed at the same time as these policies and is in our understanding coincident and consistent with them.

So with that general introduction, also perhaps a note that in my concluding remarks—and I will also be making the concluding remarks—I'd like to make reference to some comments that were made by North York this morning which we feel are at least misrepresentational and probably a direct error, if there is time.

**Mr Howard Moscoe:** Very briefly, to put this in the historical perspective, the premise of the Sewell report is to streamline the planning process. We support that and we support the major objectives that Sewell has brought forward. Nowhere did Sewell say that Metropolitan Toronto should not be delegated the same rights and

responsibilities as anyone else; in fact, he supported the opposite principle. I want to use this as an example.

Metropolitan Toronto, more than any other region in the province, has been supportive of the provincial initiatives, and I'm talking about all three levels of government. For example, under the Bill Davis government, when group homes were a local issue, it was Metropolitan Toronto that essentially said, "There shall be group homes in Metropolitan Toronto." Metro said that as part of its official plan, and as a result of that and Metro's strong persistence in that in the face of local objectives, there were group homes and there are group homes throughout Metropolitan Toronto. It has ceased to become an issue.

During the last Liberal government, the government came to Metropolitan Toronto and said: "We're thinking about delegating planning authority to Metropolitan Toronto as a first step. Would you be interested in taking it?" We discussed it and debated it, and then the government changed. So here we are again facing exactly the same issue: the delegation of planning authority. But the delegation of planning authority is for some very specific reasons.

The province essentially is saying in this act, and what Mr Sewell is saying is, "We're going to get the province largely out of the planning business by taking provincial objectives, clarifying what they are, making sure they're easily understood, and requiring the regional municipalities to build them into their official plans." Planning across a broad region like Metropolitan Toronto, you must understand, requires coordination. That's the job of Metropolitan Toronto: the subway systems, the sewage systems, the kinds of services that are necessary across a broad base rather than the narrow, specific interests of the local municipality. That's why we're puzzled, we're dismayed and we're kind of angered to think that Metropolitan Toronto has been singled out and told, "You don't have the same responsibility as every other region in the province." That flies in the face of the objectives of this report. That means that Metropolitan Toronto is singled out and will be dealt with from the desk of the minister rather than, as all other regions, through the policy statements. So it's a mystery to us why this has happened.

My friend Mr Lastman this morning cited a couple of examples and, I want to tell you, exaggerated them. Number one, he talked about a laneway. That laneway has resulted in a delay of one week, and it's under Metro's responsibility to ensure that there is access to transportation for the new subway station that is being built. In fact, on Friday I faxed a letter to the site planning committee saying the issue has been clarified and cleared up after consultation with the committee; Metro no longer has a concern. Presto. The only other example of delay he could come up with this morning Mr Commissioner might want to briefly comment on before Mr Tonks takes over.

**Mr Gartner:** I think I'd rather deal with the Bridgehome incident if there is in fact time. It's a very complicated incident. The fact is that most of the delay was related to Metro once again implementing provincial

initiatives. It's a situation where there's an industrial site, very substantial, that's being reurbanized for residential purposes on a municipal boundary, and the adjacent municipality had objected to this proposal. The fact that there was an objection from an adjacent municipality and it was a change of use from industrial to residential in our mind seemed to merit some consideration of the facts. The reality is that Metro didn't hold it up at all, because it's been referred to the Ontario Municipal Board by the developer himself and by third parties. It's still there, and our decision was made over two years ago. So I don't think there's a serious problem in that regard. I just wanted to clarify that matter.

1540

**Mr Moscoe:** And if there was any delay at all, it's not three years that it was delayed; it's perhaps three months.

**Mr Alan Tonks:** First of all, thank you for giving us an opportunity to be before the committee. I'm sorry I'm late. I was in another matter.

Howard really has said most of what I was going to attempt to draw into focus. The Sewell commission report strongly supports the concept of the delegation of the approval of official plans of the municipalities to the upper tier, and the regional chairmen and the regional planners of Ontario support that thrust. I think what we have to ask ourselves is, why did we undertake the Sewell commission report in the first place if it wasn't to come up with mechanisms that would expedite the consideration of applications for development? Because, you know, the issue has been that the Ontario Municipal Board too many times is the final point of arbitration on these applications. They are highly legalistic. They get bogged down in detail. They're very costly. Sewell came up with the recommendation that the best way to deal with that is to not place the Ontario Municipal Board in the place of being the arbitrator, but to try to arbitrate the issues at the level that they are problematical, and that is between the two tiers of government.

The interesting thing was that the consensus from the regional chairmen—from Ottawa-Carleton, from Sudbury, from I believe Hamilton-Wentworth—was that where they have the powers of delegation already, the powers of approval already, the objectives of the Sewell commission have been attained. There are very much fewer high-level arbitrations that have to happen before the board. The two tiers work these things out and hammer them out in a manner in which mostly these things are hammered out between councils, with staff interrelating and so on.

So if the provincial government, whether it's this government or the next government, wants to continue to be the arbitrator of local concerns and, even more important, if they want to rely on the Ontario Municipal Board to determine what provincial interests are, then you're going the right direction to maintain the status quo. But if on the other hand you believe that the local levels of government are the best venues, if you will, to working out differences in terms of development, then I think that you delegate away that responsibility to the upper tier. We continue to interpret the provincial interests, be they transportation, social services, land use



policies, intensification, whatever, and watch and see what happens. I believe what you'll see happen is that we will do what we have to do, and that's reach accommodations within given policy guidelines set down by the province, and in fact will do what Sewell felt and believed we could do.

So I'm here to tell you that if you want more of the same and you really don't care about intensification, you want to continue to see urban sprawl, you want to continue to see an irrational investment program for capital facilities like trunk sewers and water and sewage treatment and so on, just maintain the status quo and that's what you'll get. You'll get fragmented planning and you'll have area municipalities relying on a distant board to be the arbitrator of the public interest, and a higher order public interest, and I just don't think that's the direction Sewell had in mind.

I know it's a matter of turf. I know there's this concept of, well, a regional government is too powerful at the expense of the area municipalities. Those are valid issues for discussion, but I think we've gone a quantum leap past that in terms of what the objectives of the Sewell report were. The objectives were to remove the obstacles, bureaucratic and political, for the orderly implementation of provincial interests through the approval of developments according to pre-agreed parameters through the official plans of both the area municipality and the region.

I'm firmly convinced that if you can just get over the parochial sorts of arguments that have been put forward, you will come down on the side of Sewell, on the side of the regions, and say, "Yes, the best protection for these kinds of land use issues and broader planning issues, if we really want to make a difference, is to adopt the report for all the regions equally." I think the track record indicates that it has been working in all those regions that have been delegated authority. I have no reason to believe it won't happen in Metropolitan Toronto.

**Mr Moscoe:** The irony of all of this is that the province has effectively delegated the responsibility of implementing provincial policy to the regions, but in the case of Metropolitan Toronto it isn't, and Metropolitan has been the one that's most supportive of provincial policies. Accessory apartments is part of our official plan; we've supported that. Yet for short-term political gain, because of the yellers and the screamers, the minister has said, "We're going to treat Metropolitan Toronto differently. We're going to listen to the Lastmans of the world and to some of the local councils who don't want accessory apartments and deal with these matters ourselves," effectively nullified in your regional planning capability within Metropolitan Toronto, contrary to every single principle embodied in this legislation.

Wrong. A mistake. For the sake of some short-term political pain, the minister is guaranteed a long-term political gain, and every issue within Metropolitan Toronto will end up on the minister's desk or at the OMB rather than with the regional planning authority where it truly belongs if you want some kind of regional network of planning and delegated authority.

I want to very briefly address a couple of specific

instruments in the plan in addition to this main theme which in fact create some problems for Metropolitan Toronto in being able to bring about regional policies.

One has to do with the site plan control. The site plan control of course is the method by which these objectives are assured, but Metro has no position in site plan control. We can't deal with minor variances. We can't refer them to the board. They've been left with the local municipality, and yet what assurance is there that Metro will be able to ensure that certain objectives are met, like access to subway stations, which are an integral part of the site plan control process? There has to be some mechanism to ensure that the regional objectives can be built into the site plan control process, and that needs to be done. It has not yet been done.

The same thing applies to development-related requirements. Since development is going to be done through—what's the process called?—development control, there's no way for Metro to intercede or the regional municipalities to get into the development control process because all those are done locally and there's no way to assure our interests. It's fine when you're talking about greenfield developments, but when you're talking about redevelopment, very little consideration in the plan has been given to the concept of redevelopment. That's where Metro needs to exercise certain controls or the regional authority needs to exercise certain controls to ensure that the regional objectives are met, particularly as it relates to regional developments.

The same thing applies to sort of the sunset provisions. In other words, you have a subdivision, and by agreement you say it has to be built within a certain period of time. But we don't do subdivisions any more in Metropolitan Toronto. We're doing redevelopment proposals. There's no provision in the act to ensure that those kinds of things happen, and those kinds of things are crucial for Metropolitan Toronto.

I think basically that covers most of the points. I want to leave some time for questioning, but I want to simply, in that regard, say that if you believe the regional interest is important, then the regional authorities have to have the mechanisms to be able to ensure that regional requirements are met, be they through development agreements or site plan control. That authority has not been paid attention to within this legislation. There need to be some amendments to ensure that those things are guaranteed, particularly if you remove Metro as the approval authority for official plans.

1550

**Mr Gartner:** If I could try to summarize and bring these things together, our principal issue, as it has been repeated several times, is this issue of assignment of powers, that Metro has been isolated and treated differently than other upper-tier municipalities without, in our opinion, any planning grounds. I'd like to clarify what I consider to be really a misrepresentation of this issue entirely. It's the issue of fact or fiction.

The history, and this is verified from each of the regions, shows—and I have actually negotiated the delegation of approval authority to another municipality and administered it for a number of years—there has not

been a problem in those municipalities, as indicated by the real estate association. It has approved both the effectiveness and the efficiency of the process and there has not been the purported conflict with local area municipalities as indicated. You can check with Waterloo, with Ottawa, with Hamilton-Wentworth, and particularly with Halton. The facts are clear. What we're dealing with in Metro Toronto is a perception of what might happen, with no historical verification.

Secondly, the issue of sophistication: Are you prepared to say the cities of North York or East York or York are more sophisticated than the cities of Hamilton, Ottawa, Mississauga or Oshawa? Be careful. They aren't. I've worked in three of those four places and I would challenge that. The reality is not sophistication; it's consistency.

Thirdly, the issue of misrepresentation of provincial interests: You have created regions as a provincial Legislature to be a lower and closer-to-the-people level of government to implement provincial policy as well as local policy. One of the reasons why there's anxiety is that there's a natural tension between large-scale and small-scale issues. The regions have been asked to do that. That's the reason for the tension, not the issue of delegation. Delegation is an administrative process, but the tension will still exist if it's at the province.

The relationship with the surrounding regions: Metro is the largest region in Ontario; it's the largest municipality in Canada. Are you prepared to not grant it equal powers with the four surrounding regions with which it must negotiate? Our principal problems are boundary issues. Can we possibly be given an inferior position to the municipalities? In 1953, the surrounding municipalities around the city of Toronto created boundary problems. We have the same issue now. We must be given an equal foot to negotiate with those regions, if only for consistency's sake and for good planning.

We are visited weekly in Metro Toronto on an international basis by people who come to this municipality to test and experience first hand the results of the planning that's occurred over the last 40 years. It seems somewhat of a contradiction for us to not be recognized by our maker, the province, when in fact people from Australia, Thailand, China, all across Europe and the United States are visiting us on a weekly basis to emulate and learn from the experience which has arguably been internationally written up as being successful. This type of response from the province seems to be unjustified in our terms and, with respect to council, is very, very upsetting to them as well as to their staff.

**Mr Moscoe:** It's a position opposed by the regional chairs in a letter to the minister and several other planning bodies in the province which can't fathom or understand why this kind of political decision has been made.

**Mr Gartner:** Finally, the issue of site planning: In a reurbanizing situation, it's really important that the region, as in other regions, have access to this, if only, for instance, to implement the provincial programs for transit. The reality is that these are difficult integration issues. The local municipality admittedly is closer to the

issue, but there will be situations where there is a conflict locally and where there has to be a balance between regional and local issues. Without direct access to the site planning process there is no guarantee, whatever the feelings of goodwill are, if there's no appeal process or no direct involvement process, that the regional interests will be administered. I understand all of the regions have asked for that. It's much more important in the urbanizing regions such as Hamilton, Ottawa and Metropolitan Toronto.

The mechanisms for effective coordination between provincial ministries: The issue there was raised several times. I won't repeat it other than to suggest that public bodies should be given the same responsibilities as private. It seems to me that there's been a general understanding that the responsibility should be equitably applied.

The rest is in our presentation. I think we should have an opportunity for some questions. Thank you very much.

**The Chair:** Thank you very much. There are about two minutes per caucus, not much more than that.

**Mr Grandmaître:** We're hearing conflicting versions of planning in Metro. As you pointed out, this morning Mayor Lastman and this afternoon the city of Toronto, in a rare unanimity move, decided to keep Metro out of local planning. Surely to God, it's not only parochialism. There must be something else. How come six municipalities—

**Mr Moscoe:** Well, Metro doesn't want to be involved in local planning. Metro wants to be involved in regional planning. We don't want to do zoning, but we have a responsibility to ensure that there's some consistency across Metropolitan Toronto on a variety of issues, including transportation, sewage and other things.

**Mr Grandmaître:** Mr Lastman this morning talked about local planning, and I was surprised that he used that word, "local" planning.

**Mr Moscoe:** I can't speak for Mr Lastman.

**The Chair:** One last question?

**Mr Curling:** Yes. Someone has to interpret greater Metro Toronto. As a matter of fact, I have concerns about transportation. Not very much has been said while we go around about transportation. When it comes to transportation in greater Toronto, it's very important. When it comes to transportation in Scarborough, even for the extension of the SRT, we have been left out, and if there are weak presentations by Scarborough, we lose out. We want somebody to interpret it who has an impact. Intensification also is another area.

What I'm trying to say then, I emphasize and support the role that Metro should have a stronger role in having actually the same powers given to the regions, because I think it is helpful for economic planning.

**The Chair:** That was a statement, I think. Mr McLean.

**Mr McLean:** Mr Tonks, I appreciate what you had to say with regard to your remarks, and it intrigued me when you mentioned about the Sewell report and what the aim was of his report, to streamline the whole process of planning. From your remarks, I don't gather that you



feel it has happened in Bill 163. In your opinion, does Bill 163 improve on the planning, is it poor, or is it the status quo of what we have now?

**Mr Tonks:** No, I think it's an improvement, Mr McLean, but I don't think that the cross-Ontario objectives are going to be realized in Metropolitan Toronto if we're exempted or excepted from the recommendations of the Sewell commission.

**Mr McLean:** But you are exempted.

**Mr Tonks:** And we are exempted, yes.

**Mr McLean:** With regard to the remarks made this morning, does Metro have the final planning say over the six municipalities that are around it?

**Mr Tonks:** Not at the moment. We have delegated authority to our commissioner with respect to such matters as plans of subdivision and so on in order to get our responses back to the area municipalities.

But I would like to emphasize what Mr Eddy said in terms of the differentiation between local planning and regional planning, and Mayor Lastman. I think you have captured very clearly the difference in perceptions of what actually is happening here.

We don't want to get on the street-by-street fighting and calling meetings and so on of the area municipalities, but if we have a general philosophy, and as it comes down from the province, of, say, intensification, we do that on the basis of all of the objectives of stopping urban sprawl and a more cost-effective urban setting for transit planning and so on. What we want to be able to do is say, "All those area plans on these general areas have to be consistent with respect to those transportation or sewage or social services plans," and in fact they will probably mirror the provincial interest. We're saying we can do that better by sitting down with the area municipalities and getting those things worked out by consensus.

**The Chair:** Ms Harrington. If there's time, Mr Perruzza.

**Ms Harrington:** Thank you very much for your presentation today. I do agree with your concern about redevelopment and intensification of existing built-up areas. I think that's an important direction that we are going. I'm not sure I agree that there's insufficient attention being paid to that, but certainly it is an important issue here in Toronto that we need to work on.

1600

I have two questions to our staff here; first of all, the issue of Metro not being empowered as the other municipalities are. I need to have them state the rationale behind that. Second, I want to ask staff if in fact there will be a delay with regard to Metro's new official plan, which is one of your other concerns. Would staff be available?

**Mr Eddy:** Put a time limit on it.

**Mr Hayes:** You're out of time.

Well, the only thing I can really say right now is, the understanding is that Metro is actually looking at its own governance. I know there is some concern about whether we should deal with this immediately or wait until some other things are straightened out. That's the information I've got.

The other point is that I think we hear you loud and clear and we can raise these things with the minister. I can't tell you really what direction is going to be taken at this time.

**Ms Harrington:** Okay, thank you.

**The Chair:** Mr Perruzza, a statement? Short?

**Mr Perruzza:** A very short question. I just want to ask how they would envision the region obtaining official plan authority to work with the local role, how they envision the local role in that. I guess the last question, if they want to comment on it, is the question of governance. Until you deal with the governance issue in Metro, I don't see how you can deal with any of these other matters in some meaningful way.

**Mr Gartner:** If I could possibly address this one, very quickly, there is a perception that delegation or assignment takes away local authority. It does not. Everything that happens at the local level happens under that situation. The only change is that the regional municipality, in this case Metro, is the approving authority as opposed to the province. That is it.

There are very strict conditions of delegation in the former system, and I'm sure of assignment in this system, which would require that the municipality act in a sensitive, reasonable and objective fashion in compliance with its own official plan. In this case the regional official plan will remain being approved by the province, and if we are abiding by our plan, which we can be legislatively and legally bound to do, then in fact there should be no problem, and there hasn't been in other regional municipalities.

So the local system remains the same. Any other representation is incorrect, just patently incorrect. There is no intention to interfere with local planning. It's to allow for one step in the process to be removed by people who have to review anyway. Metro's approval is required under the current system. You can't approve it if we don't agree to it. If it doesn't comply with our plan, it's not possible for the province, under the legislation, to approve the plan. All you're taking out is one hurdle. It's a complete misrepresentation of fact.

**The Chair:** We've run out of time.

**Mr Eddy:** We'll look forward to the amendments.

**The Chair:** We thank all three of you for coming and for sharing your concerns and ideas with us.

#### REGIONAL MUNICIPALITY OF PEEL

**The Chair:** We welcome the regional municipality of Peel and Mayor Hazel McCallion.

**Mrs Hazel McCallion:** Thank you very much, Mr Chairman and members of the committee. I'm going to be dealing with one specific aspect of the bill, because I believe that you have heard from the regional—oh, could I introduce—

**The Chair:** I think he needs to be introduced.

**Mr Rob Candy:** Rob Candy. I'm the acting supervisor of legislative services with the region.

**Mr Rob Payne:** Rob Payne, legislative coordinator with the region.

**Mrs McCallion:** I got delegated to this job. As I say,

I want to deal with one specific, because I believe the region of Peel planner has been here. Tom Mokrzycki, commissioner of planning of the city of Mississauga, has been here to deal with the act and the concerns we have.

It's interesting to hear the Metro position—it's all over the map—because I take great exception that the city of Mississauga must—

**Mr Perruzza:** Let's call them back.

**Mrs McCallion:** No, I think he's on the right track. I take exception that the city of Mississauga must be governed by the region of Peel but the city of London is governed by nobody.

**Mr Eddy:** That's right.

**Mrs McCallion:** Right? You know, that's interesting. And here you are saying to Metro that they can't get involved. So it's the typical screwed-up system that we have in this province of everything, including planning. It doesn't make any sense that the city of London has no regional authority that deals with it.

I can assure you I'd challenge anybody, including Metro Toronto, to have the professional staff that the city of Mississauga and the region of Peel have in regard to planning, because we have handled more development than anybody else in the province, as you know, Drummond. But I don't want to concentrate on that. I think it's a joke what happens.

I'd like to deal with just a few items, but one specifically. It's interesting that Bill 163 would require municipalities to give notice of their proposed decision to approve an official plan amendment to any person or public body, which will have 30 days to refer all or part of the proposed decision to the Ontario Municipal Board. Presently the minister is not required to give such notice under existing legislation. Consequently, the time period to approve simple or housekeeping amendments will be extended by at least two months. There's no need for this change.

Section 51 requires a public meeting for each plan of subdivision at least 30 days before a decision is made. The region of Peel has yet to receive any complaints regarding the lack of a public meeting over the last 20 years of approving plans of subdivision, in a region that has led the country in development. This requirement will add at least 90 days to the approval process, when the John Sewell commission was to streamline—that's what we heard, "streamline"—and give local autonomy back. Both are a joke. Furthermore, such meetings will have to be held at the council or committee level, and the advantages of delegated staff approval will be lost. This is counterproductive.

Section 51 also requires municipalities to provide notice when a change in subdivision conditions applies. This section allows any person or public body to appeal the changed conditions. These new requirements will lengthen the approval process by at least two months and will considerably increase staff and mailing costs. As you may know, conditions are usually changed at the request of a commenting agency, such as a provincial ministry, and are usually not significant. By the time it gets to that process, the changes should not be significant or some-

thing's wrong with the process. The public is rarely affected, and only two or three concerns have been expressed over the last 20 years. Where is the justification for this?

Now I want to deal with the item that is of grave concern to politicians at the local level: in camera meetings. Bill 163 requires that all council and committee meetings be open to the public except for certain in camera matters, namely security, personal matters, land acquisition, labour relations, employee negotiations, litigation, advice subject to solicitor-client privilege, matters where an in camera meeting is authorized by another act and consideration of freedom of information requests.

We follow that in the region of Peel and we follow that in the city of Mississauga; maybe there are municipalities across the province that don't. But I'll tell you, I'd like to see the cabinet open its discussions to the public. That would be very interesting. In other words, the message is: Don't do what I do, but do what I say. That's actually the message that is coming forward. And it's not just this government; it's been all the provincial governments, I have to tell you. It's not just this one. I don't want to be partisan in this regard.

For some unknown reason, you are prepared to dictate to us what we do at the local level, but you're not prepared to practise what you preach at the provincial level. Perhaps the provincial government should take some of its own medicine and conduct its cabinet meetings in public. Wouldn't that be interesting?

I challenge you to follow the same authoritarian rules that you are proposing for municipal governments in Ontario. Certain subject matters which municipalities are entitled to keep private in accordance with the Municipal Freedom of Information and Protection of Privacy Act, such as plans relating to the management of personnel or the administration of the corporation and confidential advice of staff or consultants, would be required to be disclosed in open council. Premature public disclosure of these matters could cause serious injury to the region's financial and legal interests.

#### 1610

Regarding disposal of surplus real property, the region of Peel has already adopted its own land acquisition and inventory management policy which substantially conforms to the requirements of the proposed bill. Why is the provincial government interfering in a local matter which is presently governed accordingly by local governments?

Bill 163 will require mandatory public notice of any proposed land sale by municipalities. The extra costs of advertising and administration as well as the maintenance of a public register of all public buildings owned by the region imposed by this bill are significant. It should be left up to the municipalities.

You know, folks, municipalities have grown up. We're no longer children of the province. Sorry, but we're not. I would say that the city of Mississauga is better run than this province, because we're debt-free and you're not. We don't increase taxes, and we in fact give a reduction in taxes. Can you match that? I challenge you to do it.



With regard to councillors' conflict-of-interest rules, the new rules would require councillors, in addition to current regulations, to not attempt to influence persons interested in a contract with council; file a conflict-of-interest disclosure—you know what you've done, or what the bill says—file a gift disclosure certificate with the clerk if any gift is received over a certain amount.

Imagine. This is a joke, folks. I don't like being treated as a child. Sure, there are exceptions, but limit the number of exceptions there are in this province where it's necessary for this to happen. The proposed amount is \$200. We're going to have to have an appraisal person at the city to appraise every gift that's given, making sure that it's under \$200. Isn't it sad we're coming to that?

Councillors must file a financial disclosure statement with the clerk upon election and annually. You know what? What's going to happen, folks, and you better know, is that people you really should have in government, business people who should be running the municipalities and running this province, are not going to offer themselves for public office. In fact, you're going to have welfare people, and then they really have a conflict, because they're getting welfare.

It's sad that we're discouraging people we need so badly today to run government like a business and to get us back on a paying basis, to keep us from going bankrupt and paying the millions of dollars every year to international investors. I tell you, folks, we want good people in government and we should go out of our way to get good people to run for government. You're not going to get them. You're putting every roadblock in the way.

In fact this year I'm running for mayor again. I will have to disclose—and I have no problem disclosing—but the guy who runs against me will not have to disclose. Isn't that interesting? Mine will be a public document, but the little guy who put up his name, no problem at all. They know nothing about his. Isn't that interesting, how inconsistent it is?

It is important to note that the conflict-of-interest legislation governing MPPs—now we're getting down to the real root of the problem—does not prohibit MPPs from influencing persons interested in a contract with the government. Isn't that interesting? We can't, but you folks can. Nor are MPPs required to complete a disclosure-of-interest form. With respect to inside information, MPPs are prohibited from using inside information for their own interests but are not prevented from using information for another person's interests. A higher standard of conduct should not be expected of councillors than MPPs.

A new disclosure register, open to the public, would be required in every clerk's office, including all statements filed by councillors of conflicts of interest, gifts and financial information—another administrative burden. Of course, you folks don't mind because it's not out of your pocket, it's out of ours. It's a cost to the taxpayers. The social contract has cut us down to the bare minimum, certainly in Mississauga's staff, so here's another administrative role that you're putting to us.

Finally, the new local disclosure commissioner is to be

appointed by the province, empowered to investigate allegations, bring court actions, and approve requests by members to omit the disclosure of information that would reveal sources of income from services provided on a confidential basis or cause serious harm to a person or business.

Just imagine the power that you're putting into the hands of that individual. And of course, he'll be appointed by the government in power, so that's a friend to the government. In our opinion, the new commissioner will duplicate the existing commission on conflict of interest, which has a similar role for MPPs. Since the legislation does not address who will pay for this new commission, we have every reason to fear the province will simply pass on the financial burden to local municipalities just like supplementary assessments. I'm sure you all know about that. That's only \$2.8 million to the city of Mississauga. And courthouse policing, for example. In other words, they'll set up a structure and they'll say: "Now, you folks pay for it. It's our idea." I'd love to come up with ideas that somebody else pays for. I haven't been too lucky with that. I haven't been too fortunate with that.

Bill 163 fails the test advocated by this provincial government of municipal empowerment, timely and efficient decision-making, and clear policies which integrate social, economic, and environmental values. Even John Sewell before AMO last week spoke out. He's very disappointed with the bill. I can't believe it. Imagine, one of their party people.

#### *Interjection.*

**Mrs McCallion:** I'm telling you, he spoke to the entire assembly.

It limits municipal decision-making authority and local accountability. Folks, we are the closest to the people. I know a lot of people in my city don't even know who their MPPs or MPs are, because we have 20,000 to 30,000 people move into our city every year. But I can assure you, they know who their mayor is and they know who their councillors are. They don't know who their boards of education are either.

Mr Sewell also expressed considerable disappointment with the contents of the legislation and the manner in which the legislation was introduced without prior consultation with relevant stakeholders. That's Mr Sewell speaking, that your government appointed. The draft legislation contains serious implications which will negatively impact the operations of local governments throughout Ontario.

Let me give you one that seriously impacts the city of Mississauga and the region of Peel as well, and that is, section 23 of Bill 163 amends the parkland dedication provisions to ensure that municipalities cannot require more than one parkland dedication in respect of a development unless an increase in density of the proposal occurs between the draft subdivision approval stage and the issuance of the first building permit. That lifts \$11 million out of our pocket.

You know, it's interesting. I think it's a lack of understanding of how the municipalities operate.

The amendment also destroys equity in municipalities that have negotiated, in good faith with the development industry, a development charges bylaw. And I don't think you folks know that's in the legislation, because it's been sneaked in very nicely. I don't think you, the elected people, know it's in there. You better take a look at it. It seems that the UDI—and of course, the NDP government is not that favourable with the Urban Development Institute—talked to Dale Martin and convinced him to put this in without consultation with AMO. We've checked it and AMO was not consulted on it.

So I think you have serious problems with Bill 163 and especially—I just couldn't believe John Sewell at AMO. I couldn't believe what I was hearing. You were there, Ron. You heard it. But the guy went around this province and talked to the people, and then the bill comes out completely against John Sewell's recommendations, or he raised a number of items. I just can't believe it.

I feel I'm wasting my time here because I've been before so many committees—you folks have committees and Bill 120 is a good example. The fire chiefs were there, the municipalities were there, the GTA mayors were there. Who was there? Everybody was there. Bill 120 came out exactly the way you wanted it. Basement apartments all over hell's half-acre. I just can't believe it.

1620

So, I said today, I'm coming down, and I like a drive to Toronto the odd time. I don't like the traffic back. But it's a waste of time to come before committees. I've told my council; I've told the regional council—you heard me the other day—it's a waste of time but if you want me to go I'll go, because you're not listening. You're not listening to the problems of municipalities. You've got your minds made up and you're going to bulldoze ahead come hell or high water.

What you're doing is creating problems second to none. We know the problems and we're accountable, I can tell you, to the people. You folks aren't accountable, I've got to tell you, and I don't care which government you belong to: Liberal, Conservative or NDP. You're not accountable to the people. You're too far away; far too far away. Ed Philip was out Saturday and presented me with a cheque of \$1.5 million to the Lakefront Promenade Park. All those citizens standing out there think, "Boy, is that province generous." I said to Ed Philip: "Yes, that's great, and on July 1 you whacked us for \$2.8 million. It's just a bookkeeping item, and I can only assure you, Mr Minister, you're ahead and we're behind."

**The Chair:** Thank you, Mayor McCallion. There's time for a few questions, approximately two and a half minutes. Mr Curling.

**Mr Curling:** Again, Madam Mayor, you said it so well and directly, and of course this is important to hear this until they listen somehow. Of course I was a part of the process too. Your comment about the cabinet, not even our good parliamentary assistant who is here for the—he's the ears of the minister and he can't even get into cabinet to hear what goes on afterwards. It's all so closed, and as you said, all government does that itself, and it's in kind of a closed section.

How do you respond, Madam Mayor, to some of the concerns I hear that all this delay that has been before the developers has cost so much money because the individual municipalities are holding up the process? Therefore, people say that they welcome this legislation because it will save time and the legislation is so needed in order to get these developments going and because somehow the municipalities are not doing the work the way they should be doing it. So the legislation will assist them with this kind of time frame, cutting out the red tape.

**Mrs McCallion:** There's one thing that John Sewell—and I don't know if it's in the legislation. I'm not sure. I haven't asked my staff, but I can assure you we used to be held up for ages waiting for agencies to respond to development plans. I think John said it well—I heard him one day saying: "There's a deadline. If you don't hear from the agencies, you bulldoze ahead." I think that's very smart.

Secondly, the ministries have to get their act together on development. It's very interesting. I've tried to get an answer on airport noise. I get the Minister of Municipal Affairs; he came forward and gave me an answer. The Ministry of Environment says, "Oh, we can't comment because there are two matters before the OMB." So there you sit, confused.

Let me give you an example. There's a development in Mississauga that went to a hearing because the Ministry of Environment with the owner next door appealed it. The hearing was last September—no, I'm sorry. The hearing was last fall. The hearing concluded in February, and we haven't had an answer yet on it, and this is September 1994. I think it's 22 townhouses. Think of the interest that's piling up on that guy owning that land. A guy got sick, the chairman or whoever heard it, so there we sit. There's great delay. The OMB was backlogged to the point where you couldn't get hearings. That's why they came out with these preliminary hearings, and they did that in good faith, trying to eliminate the backlog.

**Mr Eddy:** In some municipalities.

**Mrs McCallion:** Yes. So it's very frustrating. To say that municipalities are perfect would be wrong. Sure there are delays, because we have to deal with the public. The OMB doesn't have to deal with the public; we have to. We try through meetings to satisfy the concerns of the public, because they don't like development. The public generally doesn't like development. It's natural for them to oppose it. You've got to go through a process to bring them along or else you end up with a costly OMB hearing. So the municipalities have a long way to go in trying to smooth the waters for the decision to be made; otherwise it ends up at the OMB.

What we do when there's a complaint to a bylaw that we pass on development is we again meet with the complainant and work with them to try to get their objection out of the way. We don't just accept it and say, "Well, I guess that's an OMB hearing." We now go back at it again to see "Can we?" We've been successful, in my opinion, in the last couple of years. Out of, say, 20 that were appealed to the OMB in the last two to three years, we've been able to eliminate about 10 of them by going back again and explaining to them that they're not



going to win because there are too many strikes against their opposition.

We have to deal with that at the local level. We have to meet them at church on Sunday; we have to meet them in the shopping plaza. The OMB doesn't meet them there, but we have to. So we have to try to pave the way for development to move with some support.

**Mr McLean:** Thank you, Mrs McCallion, for coming before the committee today. You're not the only one who has brought frustration and concerns to this committee; it's been right across the province. If you think that you're wasting your time, I hope you're not wasting your time, because the viewers who are watching us and the people who are listening here today I hope will take some of your concerns into consideration, because they should and that's what it's all about.

The concern I had also is, when I was at AMO and Mr Sewell made his remarks on the platform, I couldn't believe what I was hearing. What bothers me is that there was supposed to have been a three-month consultation period with the stakeholders before any legislation was brought forward. It probably would have been wise for the government to have done that. I think it would have brought in a better bill than what we are dealing with here today.

One question I have is, do you think this piece of legislation puts the province in worse shape as far as planning goes or do you think it's any kind of improvement? I've talked to planners and consultants and they tell me that this is going to put us back.

**Mrs McCallion:** I think John Sewell had some suggestions that we supported. I don't think his report was completely negative. There were some grave concerns we had about it, but we were delighted to hear him say that if the agency doesn't respond within the 30-day period, you just move ahead. I think that's the only way.

**Mr McLean:** That's what it was all about. It's supposed to be streamlining.

**Mrs McCallion:** There were some good points to John Sewell's report, and you can't say that the entire bill is absolutely negative, but there are some very serious problems with it. It does not do what the government has said it did, that is, restore local autonomy. It's taken it away. No question.

**Mr McLean:** It hasn't streamlined it then.

**Mrs McCallion:** It has not streamlined it and it's taken it away from the local level. I've got to tell you folks that we're in trouble economically in this country and in this province and in this greater Toronto area. That's why I put together the GTA mayors, to try to get us on the track again. People are out of work. Why are they out of work? Because we've got such a convoluted process of getting things done. My staff say to me that by the time you get approval to do something today, you don't have the money to do it, because you've spent all the money getting the approval through the environmental assessment, OMB hearings. The lawyers are having a kill. The next time I come back, I'm coming back as a lawyer, no question about it.

**Mr White:** Thank you very much, Mayor McCallion.

This afternoon there might have been times when I felt a little on the sleepy side, but listening to your presentation is just as good as a couple of cups of coffee. I always enjoy listening to you, Mayor McCallion, and I hope you don't really consider coming here to be a waste of time, because I certainly would miss your presentation tomorrow morning.

The issues that you're bringing up are very, very important, because of course the intent here with the legislation, as you've noted and as you were commenting from Mr Sewell's presentation and the good work that's gone through here, is to bring the planning process back to the people, involving people with the open meetings etc, but also to speed up the approval process by making some sense of what goes to the OMB. I believe that minor variances cannot be appealed to the OMB and there are rules set out in terms of when the OMB can say, "No, no, we're not going to consider that."

1630

I'm wondering if you could talk a little bit about your experience with those kinds of processes. Your town, your city, as you noted, probably had more development than any other municipality in the last 10 or 15 years. You've probably had more appeals, more minor variances going to the OMB than other jurisdictions, simply because of the amount of development in Mississauga. What's been your experience with the minor variance issue? I'd like to ask another question later on.

**Mrs McCallion:** We've been very fortunate. We have not had a lot of minor variances. We've got an excellent committee of adjustment. We expanded the membership of it. We've had very few come to the OMB in regard to minor variances. Our committee does an excellent job. Every one of them goes out and inspects every application that comes before it.

As you know, the city must appeal if they're really concerned. I think over the last five years if we've appealed more than two decisions of the committee of adjustment—the city itself, in appealing it. So we have not had a problem with that. Now that it's coming back for us to make that decision, we don't see any major change in that. So that wasn't a grave concern of ours.

What we're concerned about, and the bill doesn't cover it, is that the region should have the authority to delegate the responsibility to the local municipality, because we get along well in Peel. We're not fighting like Metro and the boroughs or the cities. We don't have the zoo that they have in here.

We very clearly define our regional responsibilities, regional services and therefore the regional official plan must deal with those regional services. We take exception when the region, in any way, tries to interfere with local planning, and I think that's all that Metro is saying.

So we don't have the problem in that regard, but I can assure you that we feel, and our planner will clearly outline to you—Mr Tom Mokrzycki—that we have concerns about the bill. And I'm not sure that the people who write the bill are thoroughly familiar with the way municipalities operate, I've got to tell you. I'm sorry, I think that's the problem.

**The Chair:** Mr White, I'm sorry.

**Mr White:** The Chair's told me I've run out of time, but I want to thank you for your presentation.

**The Chair:** Mayor McCallion, we appreciate your coming to Toronto and we thank you for the presentation you have made to this committee.

**Mrs McCallion:** Thank you.

**Mr Hayes:** Two quick comments.

**The Chair:** I'm afraid that won't—

**Mr Hayes:** No, I think we should clarify something.

**The Chair:** Mr Hayes, some comments of clarification. Mayor McCallion.

**Mr Hayes:** Just on the issue about who's going to pay for the commission, that will be done through provincial government resources.

The other issue I wanted to mention is, I'm not arguing with you about what John Sewell said at AMO, but I think you should get a copy of the Hansard about what he said to this committee at a later date because he talked very supportively of what this committee is doing. Thank you.

**The Chair:** Thank you, Mr Hayes. Thank you again—

**Mrs McCallion:** He talked to the committee and supported—

**The Chair:** He spoke in this committee meeting.

**Mrs McCallion:** Well, that's a typical NDP approach.

**Mr Hayes:** Is he a card-carrying NDP?

**The Chair:** Since when was Mr Sewell an NDP member? Thank you, Mayor McCallion, nice to see you.

**Mr Hayes:** Mr Sewell is not NDP, for your information.

#### SWANSEA AREA RATEPAYERS ASSOCIATION

**The Chair:** We invite the Swansea Area Ratepayers Association, Mr William Roberts. Mr Roberts, welcome to this committee.

**Mr William Roberts:** Thank you. Actually, John Sewell's parents are Conservative. The last card he ever had was Liberal. This much I know from being in Toronto.

I'm here on behalf of the Swansea Area Ratepayers Association. They've been around since before the First World War. They actually existed before Swansea was created and they've continued since Swansea was amalgamated with Toronto. I myself have been on the executive since 1974. I'm a lawyer. The perspective I'm bringing, actually, is that of more of a ratepayer person rather than a lawyer but with my legal background.

Actually, unlike Mayor McCallion, we do not agree that appeals to local councils on minor variance matters are appropriate. The problem is perhaps more so in Toronto, where the bylaws have been imposed on existing buildings and where you don't have planned subdivisions with appropriate setbacks, that a minor variance could have significant impact on an adjacent neighbour. Often what happens is, despite the delays that you have at the OMB, the people who go there have the feeling that they've been heard; they've had a fair hearing.

The problem is going to be that, when the matter goes before council, natural justice is specifically prohibited. That means you have a full right to a full and fair hearing before a committee of adjustment to be followed by a political decision. It'd be the equivalent of having a full trial at the Ontario Court (General Division) followed by Parliament deciding whether or not that decision should be allowed to stand based on political factors. No one would consider that fair.

The reality is, there are basically two types of appeals: neighbour-versus-neighbour appeals and then the broader appeals that may involve the consistency and continuance of the bylaw. The first type of appeal tends to be very low key: A neighbour wants to put an expansion on to their house. It may be higher than the bylaw permits; it may be closer to the neighbour's house than permitted; it may be bigger in terms of density than permitted. The adjacent neighbour may appear and object on the basis of affecting its light, air, views etc.

When you read the earlier board decisions back in the 1970s many board members said, "Where a neighbour says they're impacted, we'll take that seriously into consideration," because there is no right to light or air in this province any more since it was abolished in the 1880s. The only protection is in the bylaw. That bylaw sets minimum standards, not the maximum standards, in terms of separation.

The problem is going to be when these matters get before council. I'm not sure the council members will divorce themselves from their political process. Often on a zoning matter, you'll see city councillors wander in and out of the meeting, not listening to the people. When it's neighbour fighting neighbour and the council member wanders out and comes back, that neighbour is not going to assume that they have a good process. They're going to assume they have a kangaroo court. They're going to assume it's a political process. They're going to figure their rights have been denied. And they're right, because you've passed a law saying their rights are denied. Kangaroo courts are legal.

The real problem has become—and I'll try to deal with this although I'm not completely following my report here—back in 1977, the real gap came with the McNamara case or the Coles bookstore case, where a Coles bookstore expanded their building. The bylaw in Toronto required them to have a loading bay. They couldn't put it into the building. They provided a chute in place. It was argued that was 100% deviation from the bylaw; it shouldn't be permitted. The court said, "It's okay."

Since then, what are minor variances has become more and more tenuous. Now people are putting 60-foot-high buildings in 30-foot-height areas; they're having zero lot lines where you have a 10-foot side requirement and you wonder you've got more appeals happening. The reality is people aren't asking for minor variances. On top of it, there's been a gloss put on it by the board.

When you read the section of the act—and actually I have 30 copies of the act that you may want to look at later on; I'll just pass this to the clerk—it refers to minor variance. It sets out a series of tests. In the 1980s when it first started practising law the board said: "Is it minor?"



Fine. Now does it meet the four tests?" What I've noticed into the 1980s was that the board said, "Is it desirable?" If it's desirable then it must be minor, so the whole issue of minors disappear.

Now that means, hey, if I can convince the board it's desirable, then it doesn't matter if it's minor. Again, the types of appeals have expanded making it necessary for not just the neighbours to be present now but the rate-payers associations, local councils, other parties to become involved and debate the issue of what is or isn't minor.

In addition, what's happened is the local planners, knowing that there's a "minor variance" provision, have started making their bylaws more and more loose and less and less related to the reality. In the case of Toronto—and I'll just do this very briefly to give you an idea what we're talking about here—this first half is the general provisions of the city of Toronto. The second half is the exceptions to the general provisions. This doesn't include committee of adjustment applications. There is something seriously wrong when you start drafting bylaws where the exceptions outnumber the provisions. Then you get the minor variance applications on the exceptions and on the actual bylaw, to the point that citizens don't know what the bylaw means any more.

1640

To give you an example, when Swansea was amalgamated with Toronto back in 1967, we had 10-foot, 20-foot and 30-foot front setbacks. Toronto only had 20-foot setbacks. Instead of creating an exemption to allow the 10-foot setbacks to be the rule on those streets, 20-foot is the rule. That meant all the houses with 10-foot front setbacks were now legal non-conforming. When people apply for a building permit for in-fill housing, rather than going to committee of adjustment, they build a house with a 20-foot setback, so it was 10 feet behind all the other houses and the rear scape was affected accordingly.

Our position is that if you're not going to allow an appeal to an independent arbitrator body like the OMB, then cancel the whole minor variance proposal, force the planners to draft bylaws that actually reflect what's going on and go through rezoning processes where a wider public is involved.

If you're going to keep the minor variance procedures, then you may have to go to a regional body. Why not have a regional board to deal with these matters? Some of the implications have regional, not just neighbour versus neighbour—and have maybe drawn from various committees of adjustment from the different boroughs and cities, and they would hear the proposals, rather than the OMB, but at least provide some sort of regional over-cover for the area.

If you are going to follow the process that you've recommended, then we see a serious problem. The way committee of adjustment matters come before the committee is the applicant decides they want a variance. They hire their planners, their architects, their lawyers and when they're ready, they set the process in place. The present requirement says within 30 days you have to hold the hearing and there's 15 days' notice given. Since you have an appeal to the OMB, that's not that important,

because if you're not happy with the committee of adjustment's decision, you get your full hearing and trial at the OMB.

But consider what's happening now. You're going to get the same process. The only hearing they're going to get a fair trial at is the committee of adjustment. The applicants there are fully ready, the neighbourhood finds out 15 days before the hearing, they've got to talk, they have to look at the plans, they have to decide whether to hire a planner, research the facts—all within 15 days? Please; it's not going to happen.

I'll tell you what will probably happen, they'll start going to the courts saying, "We've been denied due process." The courts might start imposing things on the committee of adjustment in terms of full hearing rights and what you'll find is what happened to the OMB: Committee of adjustment hearings, instead of being 10, 15 minutes or an hour, will start being a day, two days, three days and four days, because that's where you get to argue your full set of facts. Understand, I have a right to a hearing. The Statutory Powers Procedure Act says I have a right to cross-examine. Most lawyers don't do it at the committee of adjustment level, but if that's the only place where I get to cross-examine whether that person's telling the truth or not, it's going to happen at the committee of adjustment level.

As I say, the other factor is simply that the old provisions were to deal with hardship cases, the pie-shaped lot among rectangular lots, the smaller lot, the uses that weren't caught. That's lost and I think the problem you need to really consider here is the definition of "minor variance." If you tighten that up, you're going to have fewer appeals. If you leave it loosey-goosey, the appeals are going to keep running.

If I was a developer, to be quite blunt, I'd go the minor variance route knowing I'd go to the council with probably minimal notice, only to the parties that appeared at the committee of adjustment, with very little opposition, instead of going through the rezoning process, which would have a full hearing as to the various factors, like environmental impact, traffic etc.

My one other comment—I'm going to try to be quick on this because of the time frames—is the "shall be consistent with." Our concern is that you're raising ministerial decisions to the level of law with no process equivalent to the passage of law. For heaven's sake, if it had at least been the Lieutenant Governor in Council, it would have meant the cabinet agreed to it. The more appropriate way, which some parliamentary jurisdictions have gone to for regulations, is it goes through a committee like this committee, which can hear deputations. That's the body that approves the policy, so you get a full hearing, different viewpoints are heard within the committee, not just the bureaucrats talking to the minister, the minister talking to their special friends and then producing the order which will then have the effect of law.

We're content with the contaminated lands and natural features proposals.

Conflict-of-interest provisions—we're supportive of the wider definition. One cautionary note, however: We notice that there's no provision for honest mistakes. As

a lawyer, it strikes me that you've got criminal penalties, fines and other punishments coming down the tubes for conflict of interest and you've made it an absolute liability offence, which is to say: "We don't care if you thought you had a legal right to do it, we don't care if you applied due diligence. You made a mistake; you're out; you're in jail. Thank you very kindly."

That's fine, but I don't think any MPP or any cabinet minister would like to have the similar policy applied to them: "You made a mistake. You're out. That's it. No discussion; sorry." Normally speaking, in terms of a criminal provision like this, you would put in due diligence or put in a provision that would allow an honest mistake. I'm suggesting that you may want to consider for the conflict-of-interest provisions due diligence or—I haven't put this in; it only happened when I reread the provisions—that you may want to include those sorts of factors.

Those are the submissions of the Swansea area ratepayers. They're really done from the perspective of—we could have talked about other sections, but given the time frame, we concentrated on two or three key provisions that we thought were important. We thank you for allowing us to come and speak to you this evening.

**The Vice-Chair:** Thank you, Mr Roberts. We do have time for some questions. First we'll begin with the PCs.

**Mr McLean:** Thank you for making your presentation. We've heard a lot about minor variances every day that we've been involved in this process and yours is another one adding to that.

On the first day of the hearings, when I asked the minister what a minor variance was, it was difficult to get an answer, but I've got an answer back from the ministry. It says, "The definition depends on the specifics of each application and the circumstances. However, both the current Planning Act and subsection 45(2) of the Bill 163 set out the following provisions on what constitutes a minor variance." Maybe this will be the first time you've ever heard from the ministry. "A local council may authorize a variance from a municipal bylaw if the variance is minor and it is desirable for the appropriate development or use of the land, building or structure and the general intent and purpose of the bylaw and of the official plan, if any, are maintained." The last one is, "Given the variety of local circumstances for which a minor variance may be used, it would not be appropriate or practical to define it further in legislation."

So as you can see, it's going to be pretty broad and all the time now I believe there is a need to have that final appeal to the OMB. Would you agree with that?

**Mr Roberts:** I'd agree with that. The other thing is that this interpretation of the ministry is obviously not involved in the reading of any recent OMB decisions in the last four years. They do not look to the term "minor"; they look to the term "appropriate" use or "desirable" as the critical factor.

To explain the problem that comes into that, a planner will say, "I view this as desirable." The planner is usually hired by the applicant. The citizens can't afford to spend \$5,000 to have a planner there to say, "I don't think it's

desirable." The board says, "Well, the only planning evidence we heard was from the area planner," or, "from the planner hired by the builder, who has found it desirable. Thank you," and the citizens sort of go, "Well, great."

The process when Chairman Kennedy was around was far more contained towards, "What's the situation here?" and a real respect for the bylaw, saying: "The bylaw says a three-foot side setback. You want two feet. Why do you need to have only a two-foot side setback? What's so special about your case?" In part, that's what's been lost. The onus is now on the people opposing it to hire the planners to prove that it's not desirable and that is into how many angels dance on the head of a pin; it's very hard to fight.

**Ms Haack:** You raise a point that residents within my own area, when they came before this committee in Niagara Falls, have likewise felt very strongly about, particularly when projects in our area have gone from—basically doubled in size. I think you're making some useful points. But I want to, if I may, put you on the spot just a bit longer.

1650

On page 6 of your presentation you make the point and you've highlighted it, "What is needed is a clearer definition of 'minor.'" I agree with you and I have advocated very strongly for a glossary and an explanation of definitions. I think a lot of citizens when they want to really get involved in the process find themselves in some difficulty because they don't necessarily understand the process or the terminology. How would you define "minor"?

**Mr Roberts:** It is, as everybody has indicated, extremely difficult. "Minor," in my viewpoint, is both the mathematical situation which is usually in around up to, not less than. One of these disputes I had with the Sewell report was that the internal bureaucrats deal with it below 10%. I don't assume 10% as always automatically minor. But the one problem you get into, as in the McNamara case, is where you can't provide it. Whether it's a definition of "minor" or whether it's a definition of "hardship," somehow the way it's defined right now is unclear.

To deal with the OMB, it would be useful if the procedure of application was clear so the board couldn't put this gloss on it, that minor is your first step and once the board has found that it is minor, it must still meet the following tests. That's what the ministry says, but that isn't how you read the act. They fused the wording together. When you look at the section, a lawyer would interpret it that way. Minor would be that you would have to meet the criteria or provide a suitable alternate situation.

If I can try to deal with this, you will need to separate the mathematical aspects—setbacks, heights and density, which are calculations—from a different type of problem, which is you have to provide a loading bay, you have to provide a certain type of entrance into the parking space, you have to provide certain type of use. Those are different things and they're different types of minor variances. It may be necessary to actually relook at the sections and separate those concepts out and apply a different definition of "minor" to each.



One is a mathematical formula which you can look at. The other one is harder to deal with. In Coles bookstore, they had no other choice. They couldn't provide a loading bay in the building without tearing the building down. They provided an appropriate alternate. I think the building code provides similar wording where they say, "If you can't meet the building code regulations you find an appropriate alternate method of meeting the criteria." Maybe that's what you need to do: separate the things out. I'm still working on it.

It actually was only when I started working on this submission that I suddenly realized what the real problem here was. So I thought about what was minor and why the appeals have expanded. I'd be willing to try to work something out, but what you may need to do is try to bring in different people, lawyers from the different groups, to sit down with the ministry to try and hammer something out. It's very difficult to come up with an easy definition but, in terms of my mind, I think if you separated those out, you might begin the way. It might require looking at the process and the types of variances that are being sought for.

For example, I've seen "a minor variance" including a body shop in the middle of an industrial strip where it's been specifically excluded. We had to go to the board and it was a three-day hearing. Finally, at the end of the hearing, the board member suddenly understood: "Oh, you mean they excluded it five years ago. I can't include it now. Yes, okay," and he excluded it. But we had to go through the full hearing.

Were the ratepayers wrong in opposing that or was the applicant wrong for even trying to raise the issue having had it specifically excluded by the council only five years before? I'll leave that for you to decide; but it cost the ratepayers a great deal of time and money to go there and oppose it.

**The Vice-Chair:** Thank you, Mr Roberts, for your answer, and now we have Mr Eddy, I believe.

**Mr Eddy:** Yes, thank you very much. Thank you for your presentation and raising the points you have. They're very important, and "minor variance" is a case in point. You've given us an alternative way of handling minor variances and you're saying, if we're going to continue to deal with applications for minor variances, we need to have the OMB appeal or go the other route in zoning. And then you've elaborated on that and said, "In order to define minor variances we'd have to have several categories," which I understand. I think you're getting to the root of the problem.

What do you think is the final solution? Do you think "minor variance" should be the technical measurement thing? The other system you mentioned was an appropriate alternative, which you run into in parking a lot.

**Mr Roberts:** Actually, if you look at the existing minor variance provisions and the sections that come below it, first there's the minor variance, it's followed by the provision dealing with legal non-conforming uses, and then there's the last section, which deals with adding uses not otherwise dealt with in the bylaw. It might be useful, following that pattern, to recognize the change that's occurred and—

**Mr Eddy:** But not include them all as minor variances; use different terminology. I think that's the answer.

**Mr Roberts:** Terminology, and to put a limitation on minor variances forcing anything over a certain amount to go through the rezoning process. Quite often technical rezonings go through the city of Toronto in approximately 180 days if nobody objects; if somebody objects, it's a different story. But I've seen technical problems come before a local community group and somebody explains, "Here's the technical problem, why you have to make the amendment to the zoning bylaw." They explain it carefully and people realize: "Yes, that's a technical amendment. We understand what your problem is. Sure, let's go for the rezoning." Nobody objects after the 30-day period of time and it's done.

If they go the committee of adjustment route, they may be there a lot longer. In fact, I've seen committee of adjustment matters take longer than the zoning matter to get to the board.

**Mr Eddy:** Yes, longer to get there, and then the problem is that after the hearing, the delay in getting the decision is even longer.

You mentioned provincial policies, your concern that they've been raised to the status of law, legislated documents. Of course we're not reviewing those and don't have the opportunity to review them, and you don't. There are some problems with them, we understand, even conflict between them. It seems to me we should back up and deal with the provincial policies first and really debate them and then determine what route we should go to have them used or require municipalities to use them.

**Mr Roberts:** The present formula works not badly because the board only has to "have regard to" and then you can argue and debate.

But the present social housing policies, as I found before the board, depending on the board chairman and who appointed that particular chair—they regard them with more or less the authority of law. Some of the more recent appointments tend to view them as authority of law, regardless of Divisional Court and Ontario Court of Appeal and Supreme Court of Canada decisions saying they aren't, that you have to apply your own discretion.

We do agree that the guidelines would provide an appropriate place so long as the method of developing them provides an appropriate security blanket, because it would be binding on the province as well. But if it's ministerial decision, the minister could override a minister's own decision where it's suitable for the province to override it, and that doesn't seem appropriate.

**Mr Eddy:** Yes, there's a great deal of concern about that.

**Mr Roberts:** If the minister had to come before a committee to say, "This is why I want to change it," the committee could say, "We're not going to make a change for you," or it would lead to public debate and embarrassment rather than somebody simply signing a letter saying, "I've changed it," and sending it off to the board.

**Mr Eddy:** I thank you for your suggestion regarding the conflict of interest act, too. That's important.

**The Vice-Chair:** Our time has run out. Thank you very much, Mr Roberts, for coming on behalf of the Swansea Area Ratepayers Association.

1700

#### ALLIANCE OF COMMUNITY GROUPS

**The Vice-Chair:** I call the Alliance of Community Groups, Mr Paul Crawford. Welcome to the committee.

**Mr Paul Crawford:** Thank you very much. A committee that actually runs on time? My compliments.

What I'd like to do is just give you a summary of some of the things we've put together that we consider important. Although the whole bill is important, we've tried not to deal with the total thing. We've tried to extract some things from it to point out our concerns.

One of the first things that was raised is that there were some reports that this bill does not include the region of York or Metropolitan Toronto. We're assuming that it does include Metropolitan Toronto and also the municipalities within Metropolitan Toronto.

There were fees mentioned. As a community group, we've never had to deal with fees. We just wonder what those fees might be. It should be very specific about what they are and who would be paying them.

Our concerns are related to what a lot of people have mentioned: the general wording of the bill and its lack of clarity, and the misuse of wordings within any bill that we have come up against when we've challenged certain things. We find that most bills' and most policies' wording can be taken out of context and cause a lot of trouble for ordinary folks like myself. That's why it's important that these things be crystal clear, not to just contain words but to contain numbers and specifics.

One of the suggestions that came out of this is that if a community group takes the time to read its primary plan, official plan and there's something in there that they don't understand, that requires clarification, I think it would be an excellent time for that group to go to the minister's office, not to the office of the municipality, and say: "We have some difficulty with the definition of this particular item. Would you please clarify it?"

When you know that, you can usually do something about an impending development prior to it going to the OMB or to a council, and then begin to argue the definition of certain wordings. Some of your material contains dictionaries in the back. There couldn't be a better idea than that. The only way it could be better is to make sure those definitions are clear.

One of the main things we've been concerned about when the word showed up a few years ago was "intensification." I'll be surprised if you haven't heard that before now. At the time, what we wanted to know was: What is intensification? What is the purpose of it? What is the thrust behind it? Just what exactly are you trying to do as intensification? Some people thought the word "intensification" simply means crowding, that it's just a nice word for crowding.

When we visited the Sewell commission, that was one of the things we concentrated on. I went to several of the meetings, and at the very last meeting I went to, the last meeting they had, I said: "I'm not going to talk any more

about the whole scope of things. I'm only going to talk about intensification because that's something you can deal with. I want to talk about what you have here as your definition of intensification."

That definition is still here. Let me read it to you. "'Intensification' means the development of a property or site at a higher density than previously existed. It includes: redevelopment or development within existing communities; infill development, or development on vacant lots or underdeveloped lots within a built-up area; conversion, or the change of use of an existing structure or land use; and the creation of apartments or other accommodation in houses."

I asked the rhetorical question, "Would someone like to tell me what it doesn't include?" With this policy alone, how could I protect a stable residential neighbourhood or municipality?

If I could be anecdotal for a moment, I did go to the OMB to go against a humongous development, something way out of line with the official plan. A planner showed up to argue for this development, and one of his arguments was that this is in line with the intensification policy. At that time, either Metro or the Ontario government had put out one of these very useful pamphlets, which are usually written in pretty clear English, and I had it with me and opened it and said, "This is what they mean by it." It meant what most of us are probably thinking it means: a kind of a thickening up of a neighbourhood, some additions to a neighbourhood, not the destruction of a neighbourhood, not something that goes way outside the official plan.

When I pointed that out to him, he said: "Oh. But I'm using my definition of intensification." Up to five years ago, the word "intensification" didn't even exist. It's a neologism. When you look up the word in the dictionary, it doesn't say a "thickening up of neighbourhoods." It says, actually, exactly what it is: "something to create stress."

That's just one example. One of the suggestions I would like to make, rather than just bitch, is that I'd like to see a committee set up when something is just about complete, when the wording is complete, a committee of antagonists, protagonists, whatever the correct word is, so they could go through there and clean up the wording. That way, if you as a developer said, "Well, this is what I think this means, what I want it to mean," I as somebody trying to protect my neighbourhood could say: "Wait a minute. That's not what it means. This is what it means."

By the way, when I pick this up—not this, but fairly good stuff like this, something written by someone who understands me—then I know what's going to happen in the future. One of the things we asked the Sewell commission to do, and it's pretty basic, is that when a city puts together a primary plan, an official plan, it must stick to it. Don't have 200, 300, 400 amendments to it. An amendment should be a very, very serious thing. It should be something done only when someone can come along and say, "This legal document you've put together has a hole in it and it needs to be changed," not when someone comes along and says, "You want me to do this,



but I want to do that, so give me an amendment so I can do it."

Some of our cities, some of our municipalities or areas, to me look like bar charts of history. In other words, when you look across the horizon, you see huge buildings that are out of context with the rest of the neighbourhood or the rest of the municipality. I'll bet that if I checked I would find that in that particular period, there was a big demand for condominiums or apartments etc and that was the driving force behind it. It had nothing to do with good planning, it had nothing to do with the official plan. I couldn't have looked at the previous official plan and said, "I can expect that to be there."

One of the arguments we get from planners, or development clerks, as I like to call them, is, "When you people moved into this neighbourhood, you or your lawyer should have checked your secondary or your official plan so you could tell what was going to happen." I think that's a little far-reaching type of thing to ask an ordinary citizen or a lawyer getting \$450 to do. But let's say that's the way it is. At the very same time we had that particular discussion and that argument, a gentleman beside me said: "I've always done that, I've always gone and checked before I even buy. So what do you say to me when I say to you, 'This is beyond my degree of expectancy; I expected this to be built in this area but you're telling me you're going to build that.'" The planner or the development clerk said, "Well, times change." In other words, he was quite willing to give the argument on one hand that all the documents are there for you to read and be prepared. On the other hand, "If we want to make a drastic change, tough buns."

As to the system being faster, I don't think there's a community group anywhere that cares if things are faster. We're not in the business of delaying things. I don't think you'll ever find a community group anywhere that delays it. We simply go through the process. If the process takes a year or two, that's not something that's our problem. We would just as soon get something over with as quickly as anybody else. That's fine to make things quicker. I think they would be a lot quicker if people had good primary official plans in place and stuck to them.

1710

As to the environment, it's got to be the single most important thing. It's mentioned in every document I ever get. It always speaks well of the environment and it speaks well of protection, but it doesn't get into the nuts and bolts of just how you're going to do it. Even protection of the environment can be used by people wanting massive development by saying, "If you let me put all these people here, it'll save agricultural land," or "If you let me put all these people here, it'll produce a need for rapid transit, and rapid transit's good for the environment."

If we're going to protect the environment, which is the air and the trees, we have to be more specific. I would suggest that if it hasn't already been done—I can't find it in these documents here—we should benefit by the mistakes we made before. I guess we've done it somewhat in wetlands. "Wetlands" in here is pretty specific. It

says, "This is a wetland and you can't do certain things with it."

We need to know where we've made mistakes before. In my particular municipality we've learned that if you get too close to the edge of the bank you create problems, so we have a 10-metre or 30-metre setback. Those types of things people can get their minds around.

So you can ask me some questions, I'd like to make another suggestion, and it's to do with OMB decisions. When you go to the OMB you go there for 10 days or five days etc. You're part of the process all along. I would like to see it so that when that chair or the board is ready to make their decision and they've typed it out, instead of firing it out in the mail, why not take the time to bring the parties in and say, "I'm going to read you my decision," the same as another court or someone else would do. At that time, if there's something in there that is confusing it can be clarified right away so that you're not writing back and forth. If there appears to be a challenge in there and it needs clarification, it can be done at that time.

One might think, "But their time is valuable," but after you've gone through as much time as you have, to take all of that and put it into five or 10 or 15 pages and send it out is not good enough. The reason it's not good enough is that either we don't write English very well or we don't understand English very well or maybe we write it in a way that we don't want it to be understood. I'm not sure what the reasons are, but I do know we have a problem with the wording of most of the things that are produced.

If I can just skip through, on your backgrounder, A New Approach to Land Use Planning, the third paragraph says: "The reformed system will be more open and accountable. It will take into account the needs and opinions of a community's residents, who know best about where homes and factories should be built and where parks, schools and hospitals should be located." If you had asked us for input on this—I guess you did, through the Sewell commission—we probably would have said that. We would have said something like: "We're the ones who have to live with the results. In other words, the neighbourhood has to live with the results, and beyond the neighbourhood the community has to live with the results, and beyond the community the municipality has to live with the results. We're the ones who know best about the impact."

So it's a little difficult for these documents to say, "We are empowering municipalities and we would like you to write up an official plan, but it must conform to our policies." You have to be careful that those policies don't do to communities just exactly what you don't want to be done. Policies should be something that are very specific. Maybe they should deal with human rights, something like that, but they shouldn't interfere too much with a municipality planning its neighbourhoods.

I could say more, but you'll probably hear it all several times by the time you're finished. If you have any questions, I'd like to answer them.

**Mr Perruzza:** Thank you very much for the comments you just made. Just for my own information, I'd

like to know what your idea of an urban neighbourhood is, or any other neighbourhood, for that matter, because you used that word a few times.

I'll just provide you with a brief explanation of what I think a neighbourhood is. When I think, for example, of Bay and Bloor, it's one kind of neighbourhood, which consists of a number of things. When I think of a neighbourhood inside a major arterial grid in the city of North York, I think of a substantially different kind of neighbourhood. When I think of a neighbourhood out in Vaughan or in Woodbridge, it's different again, or some of the neighbourhoods I saw out in Napanee were a different kind of neighbourhood once again.

I'd just like to get a better sense from you, because I, like you, am interested in protecting neighbourhoods.

**Mr Crawford:** Really, what you're doing is saying exactly what I'm saying about wording. What could be more simple than "neighbourhood," seemingly? A neighbourhood to me is that area that's immediately outside of your home. If the area where you purchased your home is usually noisy and bustling, then it's a noisy and bustling neighbourhood where you purchased your home. If it's quiet, with very little traffic on the streets and it has trees and it has space, then that's your neighbourhood.

I don't think it's a good idea for someone to say, "You live in a nice, quiet, spacious neighbourhood with trees and you have a 50-foot lot; therefore that should change and you shouldn't have that, it should be a 25-foot lot," because there are people in that other neighbourhood that you described, the bustling neighbourhood, who don't have that, or that it should strike some kind of a balance.

**Mr Perruzza:** This is it. This is where we're trying to get. How do we protect the kinds of neighbourhoods that people want to live in? You say a quiet neighbourhood. I'm not sure that in an urban setting such a neighbourhood exists.

**Mr Crawford:** There is no quiet neighbourhood. There used to be quiet neighbourhoods.

**Mr Perruzza:** Maybe I know of a couple of neighbourhoods that are quieter than others. How do you do that while at the same time recognizing—for example, in Metro, certainly in the kind of community I've grown up in and that I continue to represent, most of the major arterial roads are in gridlock. During the peak hours, you can't get in and out.

**Mr Crawford:** Do you know why?

**Mr Perruzza:** The blocks are very large. The cul-de-sacs have been planned and constructed in such a way that you can't get buses into them, and the rest of it. People are almost forced by the nature of their development to use their cars and so on.

In that kind of setting and with "intensification," to use the word—as Metro councillor Howard Moscoe said earlier, in Metro we deal mostly with redevelopment, and to enable redevelopment to happen, almost by its very nature you need to intensify. Otherwise, there's no interest in it, from a financial perspective.

How do you do all that—have some regard to the environment, recognize that more and more people are

being concentrated in a smaller and smaller land area—and at the same time protect the concept of a quiet neighbourhood?

1720

**Mr Crawford:** One of the things we could do—I've asked every planner I've ever talked to for this definition and I've never got one; I don't expect I ever will. One of the things you could do is put in a definition for "full" so you know the direction you're heading in and you know when you get there. We already know that some neighbourhoods in Toronto, for instance, are full and they've been full for a long time. When you redevelop those neighbourhoods, you don't need to redevelop them so they become fuller; maybe you need to redevelop them so they become less full, with more space. When we know we've made a mistake and we know what the definition of "full" is, as in "too full," why would we want to go to another section of a municipality and do the same thing again?

**Mr Perruzza:** Where do you locate the people?

**Mr Crawford:** One of the politicians said to me once, "People want to come to Metropolitan Toronto and we have to make room for them." Why?

**Ms Haack:** I represent a riding that is urban and rural, one of the Niagara ridings, and it has a lot of agricultural land, a number of the wineries we've all grown to appreciate in recent years. In fact, I'm just perusing your document on how to protect tender fruit land.

This is the question: Where do we put the people? The development pressures have been such in the local area that very clearly the tender fruit lands are very seriously threatened. It's a unique area across the entire country, one of the most diverse agricultural areas across Canada. You don't have to be a nuclear scientist to recognize that. The question then comes from my residents, from my constituents, of how you end up, knowing what the planning criteria are and dealing with the official plan, which, the day after it's printed, in all likelihood someone's coming up with an amendment—

**Mr Crawford:** The day before, sometimes.

**Ms Haack:** I would suspect it's been hotly debated for some time. The question that comes forward from my residents is: "How do we end up with that full set of knowledge about what's going to impact our neighbourhoods, and how do we as residents impact that process early on and make it reflect our view, not just the city's"—and this is where I have a real difference with the Hazel McCallions of the world—"of really and truly what a neighbourhood should look like?" It is not just up to municipal council, as much as they do good work, but it is up to the people. How do we do that?

**The Vice-Chair:** Unfortunately, I'm afraid we don't have time for an answer. We're moving on to the Liberal Party.

**Mr Eddy:** Thank you for a very interesting presentation on planning and the Planning Act and the results. Many times, I've wondered whether municipalities should spend the amounts of money that have been spent in some areas on official plans. They really haven't accomplished much, if anything, in my view, because there've



been so many changes and the haphazard development has happened in spite of them.

I feel that you have a strong view that official plans should mean much more than they do and that they should be followed. Once the community has had input and the decisions are made about what should be in an official plan, that official plan should be followed much more than it is. I get that very strong feeling from you.

In the new Planning Act, the provincial policies play a very, very important role. I wondered if you'd had the opportunity to read the policies through and whether you think the wording is consistent with those policies that people making applications under the Planning Act will have to follow, although only the Ministry of Municipal Affairs is required to follow it. Do you have some views about those particular policies?

**Mr Crawford:** One of the main policies that everyone knows about, aside from intensification, is that—once it was at 25%, now it's 30%—you must have 30% affordable housing. It's difficult to know whether they're talking about 30% within a particular development, 30% within a particular neighbourhood, 30% within a particular municipality.

I've heard the definition that if a municipality has 30% affordable within it, it's fulfilled its obligation or begun to fulfil its obligation, whereas every application I've ever seen come forward in my municipality has had the stipulation in it that it must have 30%. Regardless of the neighbourhood it's going into or the municipality it's going into, that stipulation was always there, sometimes protected by other policies.

I think it's very negative for a government to impose something like that on a developer or a municipality. For one thing, there doesn't seem to be a lot of guidelines or parameters or restrictions on it. To just to say to someone, "You must make something 30% affordable," is just not good enough. It's a noble thing, and maybe if the market were left to do what it's supposed to do it would probably produce maybe more affordability than that. But it's quite an imposition on a municipality or a neighbourhood or a community group or anybody else when anything you do has that hanging over you, so to speak.

It would be much different if you could sit down and read it and say, "Here are the guidelines and the parameters and the restrictions, and here's where it will work and here's where it won't work." Let me give you a perfect example. If someone lives in a 0.5 neighbourhood, like a 50-foot frontage neighbourhood, and some-

body lives in a neighbourhood like mine that's got lots of town houses and 18-foot frontages, to take the two things I've been discussing, intensification and the 30%, would you impose that on this neighbourhood but not that neighbourhood, or both neighbourhoods? Would you impose intensification on a neighbourhood that's already got 18-foot frontages?

**Mr Eddy:** Thank you for your explanation.

**Mr McLean:** I heard you speak with regard to wetlands and I'd like to hear your interpretation. If you had a 100-acre farm, how would you determine what is wetland?

**Mr Crawford:** That ground which is wet plus the surrounding parts of it that are affected by that wetness, where of course grass would grow and bulrushes would grow, and then there would be 10 metres—that seems to be a very popular thing—beyond that. In fact, I would suggest that within already established wetlands it would be better to be a 30 or a 50. When you're imposing a 30- or a 50-metre area around those, around the designated wetlands themselves, you're offering much more protection. It's a little difficult to impose 30 metres within a municipality.

**Mr McLean:** That's not spelled out specifically in the legislation, is it?

**Mr Crawford:** I don't believe so. It does describe what wetlands are, but it doesn't say, for instance, that you can't come up to the edge of a wetland. We have the Rouge in Scarborough, for which we fought many years, but until the actual wording is in there, "up to and until," someone can come to the edge of the Rouge and it can create visual problems. You need a buffer zone.

**Mr McLean:** I like your definition of what you determine as a wetland. Unfortunately, a lot of municipalities and a lot of farms in Ontario have been classified as wetlands when there's no water on them or near them, yet they are classified through the Ministry of Natural Resources as wetlands. We've been trying to get an explanation of how to determine what wetlands are, so I was glad to hear your comments on it. Thank you.

**The Vice-Chair:** Thank you, Mr Crawford.

For those who are travelling tomorrow afternoon to Thunder Bay, there will be transportation provided to Pearson airport outside the front steps of the main building at 5 o'clock.

The committee is adjourned until 9 o'clock tomorrow morning.

*The committee adjourned at 1730.*

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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\**In attendance / présents*

### **Substitutions present/ Membres remplaçants présents:**

Eddy, Ron (Brant-Haldimand L) for Mr Murphy

Grandmaître, Bernard (Ottawa East/-Est L) for Mr Chiarelli

Hayes, Pat (Essex-Kent ND) for Mr Malkowski

McLean, Allan K. (Simcoe East/-Est PC) for Mr Tilson

Murdoch, Bill (Grey-Owen Sound PC) for Mr Harnick

Perruzza, Anthony (Downsview ND) for Mr Bisson

White, Drummond (Durham Centre ND) for Mr Winninger

### **Also taking part / Autres participants et participantes:**

Ministry of Municipal Affairs:

Hayes, Pat, parliamentary assistant to minister

McKinstry, Philip, acting director, municipal planning policy branch

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** McNaught, Andrew, research officer, Legislative Research Service



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## Legislative Assembly of Ontario

Third Session, 35th Parliament

## Assemblée législative de l'Ontario

Troisième session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 13 September 1994

Standing committee on  
administration of justice

Planning and Municipal Statute Law  
Amendment Act, 1994

Chair: Rosario Marchese  
Clerk: Donna Bryce

# Journal des débats (Hansard)

Mardi 13 septembre 1994

Comité permanent de  
l'administration de la justice

Loi de 1994 modifiant des lois  
en ce qui concerne l'aménagement  
du territoire et des municipalités

Président : Rosario Marchese  
Greffière : Donna Bryce



*50th anniversary*

**1944 – 1994**

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
ADMINISTRATION OF JUSTICE

Tuesday 13 September 1994

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ADMINISTRATION DE LA JUSTICE

Mardi 13 septembre 1994

*The committee met at 0907 in room 151.*PLANNING AND MUNICIPAL STATUTE LAW  
AMENDMENT ACT, 1994LOI DE 1994 MODIFIANT DES LOIS  
EN CE QUI CONCERNE L'AMÉNAGEMENT  
DU TERRITOIRE ET DES MUNICIPALITÉS

Consideration of Bill 163, An Act to revise the Ontario Planning and Development Act and the Municipal Conflict of Interest Act, to amend the Planning Act and the Municipal Act and to amend other statutes related to planning and municipal matters / Projet de loi 163, Loi révisant la Loi sur la planification et l'aménagement du territoire de l'Ontario, la Loi sur les conflits d'intérêts municipaux, et modifiant la Loi sur l'aménagement du territoire et la Loi sur les municipalités et modifiant d'autres lois touchant des questions relatives à l'aménagement et aux municipalités.

**The Vice-Chair (Ms Margaret Harrington):** I'd like to call to order this meeting of the standing committee on administration of justice dealing with Bill 163.

## CITY OF MISSISSAUGA

**The Vice-Chair:** This morning we have before us the city of Mississauga representatives. I'd like to ask you to introduce yourselves. You have half an hour, and hopefully you'll leave some of that time for questions.

**Mr Tom Mokrzycki:** My name is Tom Mokrzycki. I'm the commissioner of planning and building for the city of Mississauga. On my right I have Mr Robert Johnston, who is a consultant for the city right now, formerly a director of realty services for the municipality for many years, and I have our counsel with us as well.

My presentation this morning will focus on the legislative component of Bill 163, and more specifically part III of the legislation and proposed amendments to the Planning Act. Before outlining the concerns that we have as well as some of the solutions that we're proposing, it's important to address the comprehensive set of policy statements that were prepared by the Ministry of Municipal Affairs and released as part of the package of information along with Bill 163 on May 18, 1994.

Mississauga continues to support the need for and concept of a provincial framework to provide guidelines for municipal planning. However, we really object to the policy statements in their present form. The details that are contained in those policy statements are far-reaching and really allow the province to become involved in several aspects of land use planning that are clearly of local municipal interest.

The expected outcome of adopting these policy state-

ments and the proposed legislative statements that are before this committee today is to shift decision-making authority to the provincial level while still leaving political accountability at the local municipal level. We don't think that's appropriate. This approach that's being promulgated through the legislation offers limited involvement for public consultation at the local community level, where the greatest impact of all the policy changes and the legislative impacts that you're looking at today will be felt. It's also totally contrary to one of the basic principles of Bill 163, and that's to empower municipalities to make development decisions.

In the legislation, as you're looking at it today, every planning decision shall be consistent with the provincial policy statements where it is really the empowerment element, and I'll speak to that particular section a little bit later in my presentation.

I should point out, as I've already mentioned, that there are certain positive aspects of Bill 163, so we are trying to present to you a balanced position. We're not totally negative about all aspects of Bill 163. Items dealing with greater protection of the environment are welcome. Requirements for open government are also welcome. Resolution of delays at the Ontario Municipal Board through the legislation provisions is also quite welcome. In fact, there may be one or two items of streamlining of the process, but in general I don't think that the implementation of this legislation will help in streamlining the overall planning process to the extent that was originally intended or envisioned.

Some of the areas that we feel are positive changes to the legislation are contained in your brief and form exhibit 1, so I won't go through those in detail. You can take a look at those at your leisure.

What I'd like to focus on are the problematic aspects of Bill 163. We have serious concerns with several of the proposed revisions to the Planning Act. Let me start with section 4 of Bill 163, which deals with the purpose of planning.

We support the need for the purpose of planning to be defined in the act. However, the purpose as defined focuses primarily on the province's role in defining policies in Ontario, and the reference to land use planning in the definition is really far too restrictive. As far as we're concerned, the solution to this whole situation is that the purpose section should be amended, "to provide for a land use policy system led by provincial policy which respects the decision-making authority and accountability of local municipal councils."



In addition, the reference to land use planning, as it's currently contained in the legislation, should be deleted and rather it should be referred to as planning in general in order to reflect other aspects of planning, not just land use planning. There's economic planning, there's social policy, there's environmental planning. Planning is much broader than simply land use planning, so the definition should be revised.

The next section I'd like to focus on is section 5 of Bill 163, which speaks to provincial interests. Section 2 of the act is intended to require that all planning jurisdictions have regard to provincial interests in carrying out their responsibilities under the act. This section should really be extended to every minister, every board, every commission, every agency and the Ontario Municipal Board as well as Ontario Hydro. No one should be excluded from that legislation as currently proposed. Therefore, section 5 of Bill 163 should be revised to reflect that sort of a position.

In addition, in discussing matters of provincial interest, there's a clause (q) in that section of the legislation that says "any other matters prescribed" can be considered. That is far too open-ended and quite frankly should be deleted. It confers upon the province an extraordinary power which would enable it to regulate municipalities and land use planning on virtually any matter, circumventing the legislative and public consultation process, perpetuating uncertainty at the local municipal level and making it very unclear for municipalities as to when the province will interfere in new policy areas and in local decision-making practices.

The next section I'd like to focus on is section 6 of Bill 163, which deals with the review of policy statements. Bill 163 did not include the recommendation of the Sewell commission regarding a regular review of policy statements, nor did it include a process for the introduction of new provincial policies or even amendments thereto. This type of regular review is really necessary in order to keep these policies current. Section 6 of the bill should be amended to include a requirement for the minister to review policy statements at least every five years, which is not dissimilar to what municipalities have to do with their official plans.

Next is subsection 6(1), and that deals with public consultation on policy statements. There is no formal requirement for the minister to hold public meetings, in the conventional sense, regarding the introduction of new policy statements or for the amendment. The proposal in the act is that "the minister shall confer with such persons or public bodies that the minister considers have an interest in the proposed statement."

This, quite frankly, could result in a situation where there's no public consultation if the minister so decides, and yet, depending on the content of the policy statement that he's considering, it could have a significant implication for a variety of interest groups. The act must establish a mandatory public consultation process with adequate notice for any new, or amendments to, provincial policy statements. It doesn't do that at this time.

The next section I'd like to talk about is subsection 6(2) of the bill that talks about the infamous phrase "shall

the consistent with" versus "shall have regard to." As mentioned previously, the city of Mississauga doesn't oppose the legislation per se. However, when you read it in conjunction with the policy statements that the province has in their present form, it creates a situation where the implication for municipal councils and local neighbourhoods will quite frankly be devastating in terms of loss of authority at the local municipal level over matters that are clearly of local interest.

The section that includes those words should be deleted and we should really retain the current provision of "shall have regard to" as opposed to "shall be consistent with," especially if the existing policy statements that the provincial government is putting forth remain unchanged.

The next section is section 10, that deals with mandatory or discretionary official plans. The bill currently provides that where an official plan is mandatory for regional municipalities, it's not for local municipalities, for example, and municipalities of local nature "may prepare and adopt a plan and submit it...for approval."

This totally undermines the need for strong land use planning and local authority and this is decision-making at the municipal level. Any municipality that wants to engage in planning activity, as far as the city is concerned, "must" have an official plan in order to guide the policy framework within which those decisions are made.

Official plans should be mandatory for all local municipalities and, further, upper-tier or regional official plans or even county plans should only be strategic in nature and should really provide a value added to the process and not duplicate and repeat that which is contained in local plans. Local plans, that's where the action really is at the local municipal level, and they should be mandatory and should provide for that sort of level of service.

The next section of the bill I'd like to speak to in section 10 deals with the expression of views of public bodies. Section 10 proposes to amend section 17 of the Planning Act with respect to time frames for dealing with official plans. With respect to referral to the Ontario Municipal Board, subsection 17(29) identifies the conditions under which an "approval authority may refuse to refer all or part of" a plan "to the Ontario Municipal Board."

Mississauga supports these conditions, but in subsection 17(30), the one immediately following, it allows for these conditions to be waived for public bodies. This not only affects the timeliness of the process; it implies that public bodies—that means provincial ministries, agencies and municipalities—can ignore the process and intervene at the very last minute. As far as we're concerned, all public bodies should be required to participate through the entire process. Otherwise, if you haven't, you don't really have the opportunity to intervene at the very last minute. Subsection 17(30) of the bill should therefore be deleted.

Perhaps one of the most important sections I'd like to spend some time on is section 23 of the bill, and that speaks to section 42 of the Planning Act, which essentially addresses cash payment in lieu of conveyance for

park purposes. It's very interesting that, as part of the commission's recommendations, this subject matter was not touched upon, wasn't even addressed. There was no recommendation dealing with this matter in the form in which this legislation has come forward. It's materialized, as far as we are aware, out of thin air.

**0920**

It amends the parkland dedication provisions to ensure that municipalities cannot require more than one parkland dedication in respect of development, unless there's an increase in density, between the draft plan of subdivision approval and the issuance of a first building permit.

We of the city of Mississauga support principles of fairness and equity in the assessment of cash-in-lieu-of-parkland dedication. The underlying rationale for the changes that are being proposed through this piece of legislation assumes that there is an inequity in the way in which it's being applied that in fact does not exist. Mississauga does not double-dip, nor do we exploit section 42, as it exists, to take parkland or cash in lieu beyond that which is permitted by the act. We utilize the provisions of the act to take an amount of parkland cash in lieu in combination to meet the needs of our approved official plan standards. Our ultimate parkland requirement for any development is based on either 5% of the land or the alternative requirement of one hectare per 300 dwelling units.

Because that's the way in which we operate, we have tremendous difficulty in understanding why this proposal to amend the legislation has been introduced. This amendment also destroys the equity within municipalities that have negotiated in good faith, with the development industry, development charge bylaws. The Development Charges Act places a limit or a cap on the parkland service level that a municipality can provide through revenues collected under the provisions of the Planning Act or the Development Charges Act. Any increase or decrease in revenues collected through the cash-in-lieu-of-parkland is adjusted in the development charges levy. Amending section 42 of the Planning Act, as proposed, will cost the city of Mississauga more than \$11 million in currently owed final payments. I can't overemphasize that.

Bill 163 also, as is proposed in this particular section, fails to ensure any retroactivity in terms of this provision, so developers of plans that are registered under existing city policy and in accordance with the Planning Act, as it currently exists, will not necessarily now be able to pay their fair share and don't receive a windfall, quite frankly, at the expense of taxpayers and future developers. If this amendment proceeds, our development charges bylaw will have to be immediately amended to adjust for the lost revenue, and the planning and provision of parkland in the city of Mississauga will be severely undermined — not only in the city of Mississauga. Other municipalities in the province of Ontario that utilize this legislation the same way, whether they realize it or not, will be impacted in the same way. There is a serious flaw in this portion of the legislation.

A recent decision of the Divisional Court on this type of issue endorsed the policy of the city of Mississauga in

collecting parkland dedication in two stages. Mississauga's policies in applying the provisions of the Planning Act are also followed by other major urban municipalities and, in our view, are quite farsighted. They're a critical requirement for parkland provision and planning in sophisticated growing municipalities. The court recognized the differences between valuing lands under section 51, which is a subdivision approval process, which is raw land, and they recognized the cost of land and the increased value resulting from the subdivision approval process. That's why they provided another section under 42 of the act for increased density.

The amount of money that can be collected under section 51, the subdivision section, is insufficient to acquire the parkland needed to meet our official plan standard, as the land that is obtained through that process is valued as of the day before the day of draft plan approval and it's not paid until actual registration of the plan occurs. The city would be required to pay a substantially higher value if the lands in a draft-approved plan of subdivision had to be purchased at market value at some later stage.

The calculation of densities at a draft plan approval stage in the process is imprecise at best and the actual number of units constructed is subject to, among other things, market demands, from the industry's perspective. Ranges of density are often approved to permit some flexibility in development based on a fair assessment of the land value on the day before the issuance of the building permit. The two-stage process that we utilize merely allows for a down payment of land or money at the subdivision approval stage, and it is paid immediately prior to registration of the plan of subdivision, with the final payment due at the building permit issuance, with full credits provided for the first payment of land or money that was originally dedicated — again no double-dipping in keeping with the current legislation.

In the interest of equity, the city requires land to be dedicated at the lower range of the zoned density on a parcel. We don't require developers to pay parkland dedication based on the highest density that could be allowed. We ask them to pay it at the lower range of density, and then we compensate owners for land that is required for park purposes above the minimum permitted units under the zoning designation. In the event that more than the minimum density is constructed, the increase is adjusted by that second step, or the section 42 payment.

Another concern that really is not addressed in the legislation is the situation where you have partial parkland dedication on a plan of subdivision where the balance of parkland dedication is collected as cash-in-lieu at the time of permit issuance. If the legislation is enacted, it may be more prudent for municipalities to require total parkland requirements to be dedicated at the outset. This practice will create a dilemma as the parkland would be preserved but it would not be equally distributed throughout the municipality; ie, it would not necessarily be the right amount of parkland in the right location in the municipality. The moneys required to purchase additional parkland in underserved areas therefore would have to be funded through the mill rate,



as the municipality would be increasing the service level above that which is provided under the Development Charges Act.

As I've discussed, section 42 does not provide for the consideration of previous dedication of parkland and as a remedy available for any applicant who is of the opinion that the municipality was unfair in the assessment of cash-in-lieu. As I've mentioned, there have only been two assessments since 1983 in the city of Mississauga that have been referred to the municipal board. In both of those situations the Divisional Court has upheld the city's policies, practices, as well as the values that attribute to the lands in question.

Bill 163 does not provide for an approval process in estimating the cash-in-lieu-of-parkland amount. The city of Mississauga's policy however does. It requires the approval of council and fixes the amount for a period of six months to provide for better certainty as to costs to builders or purchasers.

In conclusion on this particular section, it's imperative that the provisions of Bill 163 to amend section 42 of the Planning Act be deleted or, at the very least, be further studied and revised in order to make them workable. The integration of parkland funding between the Planning Act and the Development Charges Act must be carefully analysed so as not to reduce the provision of parkland in any Ontario municipality. In particular, this amendment will cost the taxpayers of Mississauga \$11 million, as I mentioned before, that cannot be immediately replaced by the use of the Development Charges Act and will in fact become a windfall to the developers and builders who have not paid their fair share.

Section 25, the next section I'd like to speak about just for a few minutes, deals with appeals. Basically there is a series of questions that I think still need to be addressed:

(a) How will the whole process be structured? Should it be a committee of council to hear the appeals?

(b) The proposed amendments make no provision for council deciding to not hear a review of the reasons or the request, whether it's frivolous or vexatious.

(c) Will it really save time?

(d) Can costs be awarded? The legislation makes no provisions for either party to ask for council to award costs.

(e) What happens in situations where staff and council positions differ? The end result of this process is one where council will only be in a position to review a decision of the committee of adjustment in a fair and impartial manner where that council has not previously received and dealt with staff recommendations.

Bill 163 should be amended to address those sorts of questions. We don't have solutions for you this morning.

Section 28 of Bill 163 deals with the requirements for public meetings for plans of subdivision. Mississauga and most municipalities hold public meetings on official plans and official plan amendments. There is no need and we do not support the need for holding a public meeting on a plan of subdivision.

Clauses 51(14)(a) and (b) of the Planning Act should be deleted. It's a duplication and a waste of time.

Two last items and I'll finish, and we can have questions if there are any.

Planning on a watershed basis is one item. Generally speaking, Mississauga supported the commission's recommendations to ensure planning is done on a watershed basis, yet Bill 163 makes no reference to planning on a watershed basis. This matter should be re-examined.

On the question of automatic appeals to the Ontario Municipal Board, the bill requires appeals of official plans and amendments thereto to be first referred to the approval authority, which then determines if there are legitimate grounds for referral to the OMB. The similar situation, in our view, should apply to rezoning, subdivisions and consents, and they should all be evaluated under subsection 17(29) to determine if really a referral to the OMB is appropriate.

That concludes the presentation from the city of Mississauga. We are available for any questions or discussion.

**The Chair (Mr Rosario Marchese):** Very well, thank you. Two minutes per caucus. M. Grandmaitre.

**Mr Bernard Grandmaitre (Ottawa East):** Thank you for your presentation. I'd like to take you through section 42 of the proposed changes to the Planning Act. Take me through the Mississauga process and explain to me, or this committee, how your city will lose \$11 million in final payments. Take me through those steps.

**Mr Mokrzycki:** Mr Chair, I wonder if I might have Mr Robert Johnston respond to that question directly.

**The Chair:** Of course.

**Mr Robert Johnston:** In our current process we prepare two values prior to registration of a plan of subdivision. The first value estimates the value the day before the day of draft approval, which could be three years prior to the registration of the plan of subdivision.

**Mr Grandmaitre:** I see.

**Mr Johnston:** Currently in Mississauga, a 10-acre subdivision would have a value that would yield cash in lieu of parkland of about \$162,000 at the day before the day of draft approval. We then prepare a second estimate of value which estimates the value at building permit issuance. In Mississauga, that same 10-acre subdivision at single-family densities would yield \$300,000 cash in lieu of parkland. What we will be losing is the \$137,500 that we would collect under the two-stage process and be left with the original value of \$162,500. We are losing 50% of our revenues.

0930

**Mr Grandmaitre:** You also go on to say that "if this amendment proceeds, our development charges bylaw will have to be immediately amended to adjust for the loss of revenue." If you do this, wouldn't your amendment indicate to developers that they're not welcome in Mississauga? If you were to amend your bylaw, then you wouldn't be as competitive as you are today.

**Mr Johnston:** I don't think so. When we brought in our Development Charges Act, it was negotiated with the development industry. We opened our books. We showed our inventories of parkland. We provided estimates of

cash in lieu that we would collect under the existing system. They agreed to that levy. What is happening now is, with the amendment to section 42, \$11 million will be taken away from the city, which it has to replace in some other fashion. So it is either the Development Charges Act or it's the tax rate.

**The Chair:** Okay. Thank you, Mr Grandmaître. We've gone beyond the three minutes almost. Mr McLean.

**Mr Allan K. McLean (Simcoe East):** Mine will be short, and it refers to the section with regard to policy statements. Most municipalities now have to coincide with the provincial policy statements. You are indicating in your brief that the implications on municipal councils and local neighbourhoods will be devastating in terms of loss of authority over matters that are clearly of local interest. You're indicating that they're taking the power away by changing the wording to "be consistent with" the provincial policy, and you want "shall have regard to" retained. That's correct?

**Mr Mokrzycki:** In response, let me give you an example to illustrate. The current housing policy requiring 25% affordable housing has resulted in a situation where provincial staff, through the individual approval of official plan amendments or zoning amendments, is dictating where in a municipality that affordable housing is provided. Okay? That's a local, municipal concern. As long as a municipality has the ability and is fulfilling its requirements in that regard, providing across its municipality 25% affordable housing, that decision should be left to the neighbourhoods and the communities that are most impacted by that—as long as we meet the 25%. That's not happening now.

One of the proposed policy statements even deals with parkettes, the location of parkettes and the planning of parkettes. I'm baffled as to how the location of a parkette could be a matter of provincial interest, yet it is there.

Those are the sorts of examples of issues and concerns that we've got with the policy statements which, when translated through the legislation in having to be consistent with, poses us the greatest problem. If you change the policy statements, make them more palatable, then "be consistent with" is okay. If you don't change the policy statements, "be consistent with" is not okay; "regard for" is acceptable.

**Mr McLean:** I thank you for appearing before the committee this morning. Your views are well taken.

**The Chair:** Government members? Ms Harrington.

**Ms Margaret H. Harrington (Niagara Falls):** Very briefly on another issue that you raise here, you stated you felt that planning should be much broader than land use planning. I'm wondering if you could give examples of the type of thing that you would like the province to address in this legislation for all the municipalities of the province with regard to other planning issues.

**Mr Mokrzycki:** In response, the phrase "land use planning" is a descriptor. The phrase "land use," in our view, is just too restrictive because it simply implies the physical use or the actual use of land.

Official plans, quite frankly, are major policy docu-

ments which guide many decisions of municipalities as well as the private sector. They shouldn't be restricted to just dealing with issues of land use. They should also deal with social issues. They should also deal with economic issues, business development. They should also deal with some of the other issues that are currently mandated through the legislation under the various regional acts; for example, police services, school board levels of service. There are other things that affect the overall planning of communities that should be allowed to be included in official plans because official plans are basically the visions and the guidelines for future total development of a municipality, in all of its parts, and not just land use.

**Ms Harrington:** I thought when a municipality did make up an official plan, it would think about the economic future of that city and how much was needed for residential-industrial and, obviously, services, whether it's schools or libraries, and put all of those pieces together in an official plan. So I think actually official plans now are in a sense broader than land use.

**Mr Mokrzycki:** The concern here is that by defining it as only land use, it doesn't recognize that which you're speaking of at this point in time. We're concerned that we don't want to limit it. We want to make sure that we can very clearly cover all of those aspects you're talking about, and then some on top of that, that are legitimate issues for official plans to actually contain.

**Ms Harrington:** Such things as the transportation pattern are very important to the future of a municipality. Thanks.

**Mr Pat Hayes (Essex-Kent):** Philip will clarify.

**The Chair:** Mr McKinstry, a clarification.

**Mr Philip McKinstry:** Just to clarify, in terms of our intent in the purpose of planning, it was never our intent to limit municipalities to considering only land use issues. In fact, in the policy statements it makes it clear that they should be thinking of social planning and human services planning as well. I guess our intent was that, in terms of what planning actually does, it's the impacts of all these other things on land use issues, so that those other things should be considered and then the land use determined following those. That was our intent in writing the legislation.

**Mr Mokrzycki:** I think I understand that intent. I guess what I'm saying is, the actual implementation of the intent perhaps could be improved by broadening the definition so that it's not exclusive, but inclusive.

**Mr McKinstry:** Okay.

**The Chair:** We thank the city of Mississauga officials for coming and thank you for sharing your views.

GREATER TORONTO  
HOME BUILDERS' ASSOCIATION

**The Chair:** We invite the Greater Toronto Home Builders' Association, Mr Peter Longet and Ms Laurie Gordon, second vice-president.

**Clerk of the Committee (Ms Donna Bryce):** It's Langer.

**The Chair:** Langer, is it? Longet is equally beautiful, by the way.



**Mr Peter Langer:** Good morning. Mr Chairman, the PQ did not win in Ontario. But I do enjoy the multi-cultural aspects of life in Ontario.

**The Chair:** Of course.

**Mr Langer:** Mr Chair, members of committee, my name is Peter Langer and I am president of the Greater Toronto Home Builders' Association. Joining me this morning is Laurie Gordon, second vice-president of the association and chair of our planning reform task force. Laurie is also a town planner by profession. In our non-voluntary lives, Laurie and I are both senior executives of major land development companies—in Laurie's case, a home-building corporation—and we are both active throughout the greater Toronto area.

The GTHBA represents over 720 member companies which collectively build over 80% of all new housing constructed in the greater Toronto area. This industry is by far the largest provider of employment and is the industry that will be most affected by the proposed changes to the land use planning system in Ontario. In the greater Toronto area alone, we build approximately 15,000 new housing units a year, directly generating over 37,000 person-years of employment.

I would like, first, to say that we are in agreement with the government that the planning system in Ontario is in need of overhaul. It is the single most significant factor in making housing more expensive than it need be and, as a consequence, it has a very direct and negative impact on Ontario's competitive position in attracting new business investment providing sustainable, permanent employment growth opportunities.

Planning reform is needed. However, it is absolutely imperative that we take whatever time is required to understand the broad economic impact of this bill and the accompanying set of policy statements and get it right.

The GTHBA has taken every opportunity available over the past few years to provide its input and to express its concerns as the draft policies and legislative proposals have evolved. Regrettably, for the most part our comments seem to have fallen on deaf ears.

The planning system and the intricate relationships between the industry, municipal and provincial governments, the environment, the business community and the home-buying public are matters of enormous complexity. This legislation will have a major impact, affecting the lives and lifestyle of Ontario residents for many years to come.

0940

We respectfully submit that it is of paramount importance to understand its full impact before we proceed with amendments and policies that may not have the desired effect. We submit that the proposed legislation and policy statements are flawed in many respects and that very little regard has been paid to the broad economic impact, in particular.

The government, to its credit, and in recognition of these facts, has created under the chair of Mr Dale Martin an implementation task force, which we are happy to be part of. As this group proceeds, the enormity of its task is just starting to become apparent. In due course it

should lead to a better understanding of the role and impact that the proposed legislation will have on all major stakeholders.

We submit that it is only after this process has been completed that we can all properly assess the economic and social impact of the proposed changes—and that should then be a matter of public consultation. To do otherwise would clearly be putting the cart before the horse, and a horse with obscured vision is a horse without direction.

Mr Chairman, the Greater Toronto Home Builders' Association, together with the Urban Development Institute, has submitted a joint response which you have already received. This afternoon you will hear from the Association of Municipalities of Ontario. We are joined with that organization and many others in echoing many of the same concerns.

We are the people who must operate within the system day in and day out. We are the people who have an intimate understanding of the current process, with all its flaws, and the people who will have to work with the new system. In your deliberations you ought to give great weight to what we are saying.

In our joint submission we have raised a number of concerns and have made a number of recommendations. This morning we would like to comment on just one of those issues, an issue that has been touted as one of the primary objectives of planning reform, and that is the issue of streamlining. Laurie will deal with that for you.

**Ms Laurie Gordon:** As Peter mentioned, the minister has constantly claimed that Bill 163 will streamline the process. Every time I hear this I ask myself, either the minister doesn't understand how the planning process works or I don't.

First, these changes are so sweeping and comprehensive that, in the transition, everything will be slowed down as the players seek to interpret the huge amount of legislation, regulations, guidelines and policy statements. In planning matters, everything comes down to words on paper and how those words are interpreted. Even though we have not seen the complete package, as promised, the volume is already overwhelming.

Just to highlight a few examples of how streamlining has not been achieved, I'd like to touch on a couple of points.

The first one: Bill 163 requires that a public meeting be held on plans of subdivision. This is a new requirement which we've never had before. It will take time. It will cost time if we allow special interest groups, the NIMBY consequences, to generate issues at the 11th hour, that being at draft plans of subdivision. More important, the meeting is totally redundant because the public interest is fully served by the regime of official plans that have to be consistent, as they are proposed, with policy statements, plus the public meetings which have already been placed on official plans and zoning bylaws.

The provision is overkill. It will not streamline the process and it should be eliminated, as should the provision for circulation on conditions to draft plan amendments and red-line draft plans.

Furthermore, Bill 163 proposes that section 3 of the wording shall be "consistent with." We are strongly opposing that recommendation and suggest that we revert back to the present wording, "with regard to."

Bill 163 gives council 180 days to hold a public meeting on an official plan amendment, followed by a 30-day waiting period before council can make a decision, followed by 150 days for the upper tier to make its decision—potentially one year in the process. By that time, the applicant just might go and build his plant in the US.

With respect to 180 days, we suspect that this maximum will become a minimum. Six months is a long time to wait, particularly if your application is ultimately turned down. We feel that it would not be unreasonable for councils to hold a public meeting within 90 days, and the right to appeal to the Ontario Municipal Board should also kick in at that 90-day period.

The 30-day statutory waiting period between the public hearing and a council decision on an official plan amendment is wasteful. Given the schedule of municipal council meetings, the delay may be much longer; and where there are no issues, it's just a waste of time. The 30-day waiting period should also be eliminated.

Bill 163 has also dramatically limited the applicants' rights of appeal. Under the current system, an applicant can appeal to the OMB after 30 days. Under the proposed system, the applicant cannot go directly to the board. There are no limitations on the time the approval authority may take to refer an application, and the referral authority can deem an application premature with no recourse to the applicant. Clearly, this is arbitrary and unfair to the applicant and needs to be amended. We have to have an absolute right of appeal.

The way the bill is currently drafted, a provincial ministry can seek referral to the OMB at the end of a process, whether or not they have participated in that process. We call this sandbagging. It is one of the biggest problems with the existing system today. All provincial ministries must be subject to the same rules as everybody else.

Furthermore, several sections of the proposed act prevent the running of time for the right of appeal until the approval authority has the "prescribed information and material." A complete application will be described in an as-yet-unwritten regulation. We are very fearful that we may never get in the door or that we will have to spend an inordinate amount of time and money to do so. The complete application should not be a condition precedent to the running of time for an appeal.

These are just a few examples in the many ways that Bill 163 lengthens the process, not shortens it. Neither the minister nor the ministry has ever advised us that we are interpreting the bill incorrectly, and we have sought guidance many times on this. Yet the minister continues to promote the streamlining aspects of the bill.

We've made suggestions that will have the effect of improving upon the worst problems with the bill, and further suggestions are outlined in our joint brief with the Urban Development Institute. We hope that the commit-

tee will recommend these amendments during your clause-by-clause referral.

**Mr Langer:** As a further demonstration of the prematurity of this legislation, I would like to comment on one of the accompanying policy statements, and that is section C, the housing policies. This section seeks to increase the component of affordable housing in all new developments from the current 25% to 30% at the 60th income percentile. It further states that one half of these units are to be affordable to the 30th income percentile.

It is focused exclusively on new housing and is an unattainable goal at the 30th income percentile in the greater Toronto area without some form of subsidization. The cost of land, together with development charges and the cost of servicing and financing, will be very close to the price threshold before the units are even constructed.

To the best of our knowledge, the government is not budgeting to provide the required subsidies. How then will this goal be attained if the development application is to be consistent with the policy? Will it be on the backs of all other new home purchasers who will have to pay more for their homes in order to make up the shortfall? This is an unanswered question of implementation.

Furthermore, this policy does not allow municipalities to consider existing housing stock as part of the equation. It is a known fact that the vast majority of first-time buyers purchase homes on the less expensive resale market. Based on projected demographics, this is a reality that will continue and likely increase.

The GTHBA has addressed this problem, and we are pleased to provide you with a position paper that demonstrates its lack of justification and suggests a reasonable solution. I believe that's already been circulated.

In conclusion, we recommend that the government not proceed at this time with enacting legislation whose total impact is not yet fully understood and which so many groups are telling you is badly flawed. The current system, with all its warts, is at least working, and there is no crushing urgency to make changes that could matter worse. Let's take the time to consider all concerns, make the amendments, and get it right.

Thank you.

0950

**The Chair:** Thank you. Mr McLean, three minutes.

**Mr McLean:** That's where I want to start my question, for the people of the province and the developers who are putting in plans of subdivision with regard to the affordable policy requirement being changed from 25% to 30%. The home builders' association and your group are going to have to increase the units. If you have a 100-unit subdivision, 30 of them would have to be for affordable housing. Is that what the policy reads? Is that your interpretation of it?

**Mr Langer:** Yes. Thirty of those 100 units would have to be for affordable housing at the 60th income percentile, and 15 of those units would have to be affordable at up to the 30th income percentile.

**Mr McLean:** Who's going to determine what's affordable and what's not?



**Mr Langer:** The government has a methodology of determining that and it issues bulletins that indicate what the price thresholds are, and I believe it is throughout the greater Toronto area.

**Mr McLean:** Is this going to affect the rest of the homes in that plan of subdivision?

**Mr Langer:** What we're seeing is you cannot buy the land, service the land, finance it, pay the development charges and build the houses to meet that price. We've done a quick calculation and—

**Mr McLean:** But who's going to pay the difference?

**Mr Langer:** That's exactly my point: We don't know. We don't see that the government is guaranteeing to make up the difference in the form of subsidy, so it would have to be added to the price of the other homes in the subdivision, in effect.

**Mr McLean:** That's what I said; it would be on to the other homes.

**Mr Langer:** That's right. This is one of our biggest concerns, of course: What is going to happen to the price of housing? When you look at the impact of all these things, the end result is going to be to drive up the price of housing, and that's not good for Ontario, it's not good for its residents and it certainly doesn't help us to be competitive in trying to attract industries to locate here.

**Mr McLean:** But then the Mississaugas of the world say, "Well, you're taking \$11 million from us in fees, so that will go to the other end to build the houses." They're not happy because they're losing money on the fees of parkland or whatever. So therefore you say that it's going to go up anyway.

**Mr Langer:** I'm saying the combination of factors. I haven't looked at the Mississauga numbers to measure what effect that would have, quite honestly, but the combination of factors—the restrictiveness of this legislation, the restrictiveness of the policies in total, the limitation on land supply—is going to have the effect of driving up prices. It's going to be more costly to produce housing in this province.

**Ms Christel Haeck (St Catharines-Brock):** Ms Gordon, I appreciate your comments. I don't necessarily agree with all of them, needless to say. I'm interested in your approach with regard to the complete application and your comments with regard to public meetings for plans of subdivision.

Let me just give you a brief preamble to explain where I'm coming from. The constituents I represent down in the Niagara Peninsula have raised with me on a fairly regular basis their concern that they have no real idea of what is happening with their subdivisions. Official plans change regularly. Amendments happen almost the day after they're supposedly approved and concluded. So they advocate very strongly to know completely what is going to be happening to their neighbourhood, and the idea of having a complete application, for them, as people who will be directly impacted by a subdivision, is something they consider extremely important as part of this legislation. So I'd be interested in your reaction.

**Ms Gordon:** Okay. First, the comment on public meetings for draft plans of subdivision: It's our position

that in the time it takes to get to the draft plan of subdivision, chances are you've had a number of informal and formal public meetings for the official plan and the zoning bylaw. In most instances, big presentations are brought forward that outline the particulars of a draft plan of subdivision that's there for display at all stages of the public meeting process. When it gets down to a draft plan of subdivision, you're getting down to how a particular street is laid out, how a combination of unit mixes is placed together, how a functional engineering issue is being addressed. In terms of the official plan, which is a guiding document that's supposed to balance all interests that are trying to be weighed against each other, and when the zoning bylaw official plan comes down that looks at particular densities etc, there's very little left, except for perhaps the colour of a house, that needs to be addressed at a public meeting.

Furthermore, in most municipalities, if not all, the public process, all council meetings, all planning committee reports are open for public information. They can be viewed at any time. The way that my company works is we have many non-legislative-required public meetings with our community participants so we can find out what their concerns are. To require it is just another step that, quite frankly, is redundant, in my view.

**The Chair:** Very briefly, Ms Haeck.

**Ms Haeck:** Yes. I just wanted to make the comment that possibly you'd like to look at the reality of other parts of the province, because maybe your company operates that way but that surely isn't the case for what's happened in Niagara on a fairly regular basis. It has made for a very cynical public, and they're much more happy with this than what you're proposing.

**Ms Gordon:** I cannot comment on the Niagara situation.

On the second part of your question addressing my views on the complete application regulation, one of the things that we are strongly of the view is that to interpret policies that have been laid on the table today and a bill, you need the guidelines and the regulations in front of you to truly assess what the picture is and how the game will be played with respect to both the public and private interests.

The complete application is being handled by a regulation that no one has seen. What we suspect is that that regulation is going to outline a vast number of studies etc; that it is going to be extremely expensive. That's fine for developers and home builders who are big public corporations and can afford—I don't know—\$250,000 worth of studies, for example, but the small builder and small developer, chances are they probably won't be able to continue doing business any more because they won't be able to afford the expense associated with it.

I have no difficulty with a reasonable amount of application information required to properly assess an application. I think that's expected, and the development and home building industry is quite professional and sophisticated today and we're quite happy to do that, but what that regulation will unfold, there isn't anybody around the table who knows that today.

**Mr Alvin Curling (Scarborough North):** Thanks for an excellent presentation. You've echoed what we have heard around the province, very much so, especially in regard to the housing policy.

Now, could you help me too, because I'm trying to get a definition. What would be the difference between a non-profit developer and people who come under your jurisdiction?

**Ms Gordon:** Are you going to handle it, Peter?

**Mr Langer:** Many of our members do build non-profit housing when projects and funding are available and allocated.

**Mr Curling:** So, in other words, you do have people who consider themselves non-profit developers under your jurisdiction.

**Mr Langer:** Absolutely.

**Ms Gordon:** The predominant difference, though, if I may interject, is the non-profit home builder or developer is more a turnkey general contractor and developer, and the allocation to build that non-profit unit has predominantly come from this government's allocations. I do not see any more allocations coming down; I have not seen any announcements or financial resources associated with that. So how another non-profit unit is going to be built is beyond me, and how we're going to meet that 50% affordability at the 30th percentile, which we interpret as a purchase price of about \$85,000—the private sector cannot build an \$85,000 unit anywhere in the greater Toronto area.

**Mr Curling:** So as long as the government continues to give heavy subsidy or support in the non-profit sector, they can continue. As soon as that ceases, they'd have to revert to the other process in which they normally operate.

**Mr Langer:** This is exactly the predicament, because the policy says that this percentage of units must be provided, and if the funding isn't available to provide it, it can't be achieved.

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**Mr Curling:** Because the fact is too, and that's why I'm trying to find out—would you say that those non-profit people operating on that non-profit concept make a profit or make money?

**Mr Langer:** The people that build, supply materials etc throughout of course make a profit. The only person who doesn't make a profit in non-profit housing is the person who lives in them.

**The Chair:** Briefly, Mr Curling.

**Mr Curling:** These are rather big questions—

**The Chair:** I know, but we ran out of time.

**Mr Curling:** It's a pity because we get a bit of understanding for all of this. There was a little contradiction in your comment. You said the system is working fine. In the meantime, would it be accurate to say that we don't need an elaborate legislative change but a more efficient way of working in the system? In other words, cutting out the time, as you said, the red tape, and really effectively doing that. That would save money. Get back to the small business you're talking about.

**The Chair:** Mr Curling, I don't want to interrupt you but we're running out of time.

**Mr Curling:** Yes, I'll be very short. Would you say in that aspect would make it more efficient, to get back, as you said, the small builders to build and make affordable housing?

**Mr Langer:** I would agree with that.

**Mr Hayes:** In regard to the housing policy, I think if we look at section 2(b), it does say that opportunities will be provided wherever feasible, and I think that's very important and that is noted in there. I just wanted to make that point.

There's a couple of more areas where I'd like to clarify. With the new section 22, you were talking about the deadlines and there being no time frame for the approval authority to send to the OMB for example, but just moving back to if council does not deal with an application for official plan amendment within 180 days, the applicant may request that council forward the amendment to the approval authority and it has to be forwarded within 15 days. So there is a time frame there.

The other area where there's no time frame—I think you mentioned there was no time frame for the approval authority to send to the OMB. Section 22(8) refers to the time frame in 17(34). For example, the approval authority has 150 days to give notice of the decision and if they fail to do that, the applicant can appeal to the OMB and that has to be forwarded to the OMB within 15 days. We are hearing what you're saying and we'll be certainly taking a serious look at these, but there are time frames there.

**The Chair:** Do you have a quick response?

**Mr Langer:** I will speak to "wherever feasible": What does it mean? Who decides? Who defines what's feasible and what's not feasible? This is one of those points that's going to hold us up as we go through the process. Do we have to do a study to determine that? We don't know. We don't know a lot of what's here and that's why we're saying that this legislation should wait until all the implementation task force studies are done, and then we can measure what that means and correct it. Laurie, maybe you would speak—

**The Chair:** Very briefly again, please, because we're running out of time.

**Ms Gordon:** We are aware of those time frames but if you combine them with the prematurity evaluation, there would probably be an argument on either side of the table for any planning issue today to be premature or not be premature, depending if they decide to deal with it or not deal with it, for a whole host of reasons. So combined with the prematurity evaluation, the time frames are not worthwhile if you can veto it with that kind of consideration.

**The Chair:** Thank you. Anything further?

**Mr Hayes:** Well, you do raise a very good point about who decides what is feasible. I'm not questioning that but I think there has to be a decision made between the developer and municipal council, and look at the needs in their municipality. These policies are not just strictly cut and dried and you have to do it exactly this



way. There is room for flexibility to meet the needs of the community.

**The Chair:** Okay. Thank you, Mr Hayes.

**Mr Langer:** We don't see flexibility with the wording "be consistent with." There is flexibility with "have regard to."

**The Chair:** We thank your association for coming today and for communicating your concerns to this committee.

#### CITY OF BRAMPTON

**The Chair:** We invite the city of Brampton, Mayor Peter Robertson, Mr John Marshall, commissioner of planning and development.

**Mr Peter Robertson:** Good morning. Thank you for having us. My name is Peter Robertson, and my colleague is our commissioner of planning, John Marshall. I'm going to make a brief submission, and hopefully John will be able to answer all your questions, unless they're of a political nature, and then I'll try.

Mr Chairman and committee members, I am here to present to you a summary of the Brampton response to Bill 163. A formal response with respect to the planning and development reforms has been submitted to you, on August 15. It was a 36-page report.

I would like to note that the city of Brampton has made many submissions and participated extensively in the deliberations related to the various reports issued by the Commission on Planning and Development Reform in Ontario, and the consultation paper too, and we appreciate and respect that cooperation between the municipal level and the provincial counterparts.

With respect to the revisions to the Ontario Planning and Development Act and the amendments to the Planning Act and the Municipal Act that deal with planning and development reform, the provincial government has proposed legislative changes that will substantially implement the vision that Brampton has on planning and development for the greater Toronto area. So from the outset, we want to say that we're pleased with the direction of the report.

Here are some of the highlights, as we see them, that are positive:

The province is stating the planning policy in areas of extensively defined provincial interest.

The province will delegate the approval of local official plans, secondary plans and related amendments to the regional municipalities that have approved official plans.

If the proposed legislation is passed as intended, regional municipalities will be enabled to delegate the approval authority for plans of subdivision and condominiums to the local municipalities. That's something we feel we're capable of in Brampton, to have the region of Peel delegate some of the approval authority to us. We already have a resolution on the books at the region of Peel agreeing to that. We have been informed by the provincial staff that they inadvertently failed to include that particular provision in the written material so far and that you are proposing an amendment. Brampton would

appreciate confirmation of that fact in writing as soon as possible.

The proposed amendments will provide the minister and the Ontario Municipal Board with the ability to expedite the consideration of legitimate appeals and to refuse to consider appeals that have no planning grounds, that are frivolous and are only for the purposes of delay or those that have been made at the last minute with no objections raised before the council. As you likely know, in the city of Brampton we've had experience with such a frivolous appeal recently, and we're pleased that the OMB recognized that. We're happy that your documentation recognizes the game that people play.

Local councils will be enabled to hear appeals of committee of adjustment decisions.

The local councils will be able to implement a development permit process that provides flexibility, within pre-stated limits, in the interpretation of zoning bylaws by staff.

Local councils will have expanded powers related to the regulation of site alterations, eg, dumping of fill and altering the grading.

That's very critical, because in our community we presently have some waste companies, for example, that are in violation of the environmental laws and abusing the existing laws in my city, and for the life of me, for the life of our bylaw and legal department, we can't clear them up with the present legislation. It's just an embarrassment to see, in this case, grades on a particular property in a subdivision, an industrial subdivision, 30 feet high with waste. The Attorney General, through the Ministry of Environment and Energy, is going to deal with it, but it's now been three years in the process.

#### 1010

The city of Brampton therefore endorses the proposed legislation that is before you, but we have some suggestions for improvements. We request that the following changes be made to Bill 163 before the third reading, and I'll list them now.

(1) That the proposed section 2 of the Planning Act, the provincial interest, be revised to indicate that the province has a "general" or "broad" interest in the matters set out in the section. Otherwise, the extensive list of items of provincial interest is an invitation for the minister or his staff to interfere with a broad range of general and specific local considerations in the planning process. We ask that that be clarified and changed.

(2) That the proposed subsection 3(5) of the Planning Act be revised to indicate that decisions of a municipality shall "be consistent with the intent of" provincial policy statements, thereby giving some latitude for interpretation while still improving on the current wording of "shall have regard to." I'm sure many people are going to be talking about that issue. Our suggestion from planning staff is the words "be consistent with the intent of" would help.

(3) That proposed subsection 17(7) be revised to require that the preparation of an official plan is mandatory by local municipalities in regional municipalities that have a two-tier planning system and that preparation of

the official plan is a prerequisite of a plan of subdivision or condominium approval authority powers being delegated to the local municipality.

The current wording makes regional plans mandatory and local plans permissive, thereby implying that regional plans are a more important component of the planning process. That, just at the last council meeting at the region, was brought to light in that the region, by its composition, just parochially can outvote the smaller municipality in the community, and the shift of giving the power to the region for approval isn't necessarily as objective as perhaps it was with the province. So we're going to need some help in that particular area where the local authority, the local city in this case, is improved. We find this present wording offensive. The recent treatment I've mentioned could be documented if you wish.

(4) Subsection 34(11) of the Planning Act should be amended to change the time period allowed for the processing of a zoning bylaw amendment from 30 days to 150 days, rather than 90 days as proposed by Bill 163, in order to provide a realistic period for even very expeditious processing of such an amendment, considering the requirements of the act related to the public notification and public meetings. Because we're in the business of hosting public meetings, sending out notices and all that, our staff are saying it's only practical to give the 150 days.

(5) That appropriate sections of the Planning Act and the Ontario Municipal Board Act be amended to establish the following time limits on the municipal board's consideration of appeals from the date the appeal is received: holding a pre-hearing conference, three months; commencement of the hearing, six months; issuing the decision, 30 days from the adjournment of the hearing except for very lengthy or special hearings.

We feel the Ontario Municipal Board should be subject to deadlines in the same way that municipalities are. This will discourage objections that are for the purpose of delaying development and will force the board to maintain the staff resources necessary to expedite the hearings. We at the municipal level are very frustrated when something is referred to the municipal board and we know and everybody knows that the hearing won't be set for a long time. It just slows things down.

(6) The proposed amendments to subsection 41(8) of the Planning Act, related to site plans, should be expanded to authorize local municipalities, not just regional municipalities, to require the conveyance of land for public transit rights of way.

(7) That Bill 163 be amended by including an amendment to the Planning Act that enables the province, regional municipalities or counties to delegate the approval authority for plans of subdivision and condominiums to local municipalities that have approved official plans. I dealt with that in my introduction, and it's absolutely critical that you come through with that.

(8) That the proposed section 223.1 of part XXVII of the Municipal Act be amended by adding provisions that enable the councils of local municipalities to regulate tree-cutting, vegetation removal and the removal of topsoil and peat.

As you're aware, the proposed provisions currently address only the dumping of fill and the alteration of grading of land. In our community, there are examples where developers come in and cut down the trees the week before their application is put forward to the city, and there is no recourse. By the time we get in touch with the province or the region and the bureaucracy that is in those levels of government, you just can't deal with it. So you should realize that you must empower the municipalities to deal more effectively with this issue that needs fast, prompt action, and the closer to the situation, the closest government to the people, is the municipal council. You must trust us if you want to save groves of trees and significant vegetation.

With respect to the revisions to the Municipal Conflict of Interest Act and amendments to the Municipal Act that address other municipal administrative matters, the city of Brampton provided comments back to the ministry in 1992 with a response to the white paper, Open Local Government. Those continue to be the reflection of Brampton's views and we hope that we'll be invited to participate in the regulations and review of the regulations once they've been drafted, just as we were for the planning process.

That concludes my brief summary of our 36-page brief. We're open to questions.

1020

**The Chair:** Thank you very much. We'll begin with Ms Haeck for three minutes and a half or so.

**Ms Haeck:** I do want to thank you, Mr Robertson, for bringing forward your recommendation regarding tree-cutting. A number of other deputants have likewise encouraged the addition of tree-cutting and vegetation removal to that section, and I know you're speaking for a number of people in my riding as well who feel very strongly about that.

I am interested, because I have the Niagara Escarpment going through my riding as well, and I just happened to look at the back, page 19, the very back, and you followed that along, that you have some concern about the Oak Ridges moraine. I know that's not something you made a verbal comment about, but it definitely is reflected in the written presentation here. I'm wondering if you could expand what your concerns are with regard to the Oak Ridges moraine.

**Mr Robertson:** I'm going to ask John Marshall, our chief planner, to do that.

**Mr John Marshall:** Our concern is that the province, having empowered municipalities to deal with various types of application without involving the province in planning on a day-to-day basis, is going to substitute that control with layering of provincial policies, such as the Oak Ridges moraine. We're using it as an example of another provincial layer that can be put on the local planning process. Another example is that the office of the greater Toronto area is developing policies that are, say, overlaid by the stated provincial policies. Now that we've been empowered to deal with various detailed issues at the local level, we're going to be put in a straitjacket with the Oak Ridges moraine, the Niagara



Escarpment Commission, which applies to the town of Caledon in our area, the parkway belt west plan, the OGTA policies and whatever policies come up.

That was the concern we expressed in our brief, and certainly the province has been responsive in terms of our comments on the existing policies, but we're just concerned that the bureaucracy at the province will have the ability, through the statement of detailed policies, just to tie us up in knots anyway in a different way. That's the general concern we're expressing. Certainly we're involved in the development of those policies and we'll make those views very strongly expressed as we go through the process.

**Ms Haeck:** I thank you for your remarks. I know there's sort of a mixed set of feelings with regard to the escarpment commission, but most constituents that I know—definitely not all, but a great many of them—are highly supportive of the escarpment commission, and obviously the designation of those lands in keeping them special and limiting the kind of development that occurs. I'm not sure how far along the Oak Ridges moraine study is. It's been going on, I guess, for a couple of years. Again, it's one of those special areas that I think a lot of people would feel very strongly about at least maintaining in some natural form if at all possible.

**Mr Grandmaître:** After two years of Mr Sewell's tour of the province, do you think the three main objectives of the government were achieved? Cutting red tape, giving municipalities more power, the environment: Do you think the three main objectives were achieved?

**Mr Marshall:** Certainly in terms of empowering municipalities, I think the legislation has gone a long way to enabling regional and local government to deal with their affairs in terms of planning and development. In the region of Peel, once the region adopts an official plan, the city of Brampton will not have to go to the province for approval of very site-specific-type official plan amendments, where there was absolutely no value added at the provincial level. That's one instance where I think the legislation has really helped a great degree to empower us to deal expeditiously with the development, because it's in fact an embarrassment right now with all the various levels of government involved and everybody pointing fingers in terms of who's holding it up. So definitely I think that objective has been met.

In terms of dealing with the environment, I think the legislation, and I think you have to read it in conjunction with the policy statements—I feel that certainly the province has put its cards on the table. In my view, some of the policies are too specific, but I think it's a step in the right direction. I think allowing us to deal with both planning and environmental issues at the same time, concurrently, helps a great deal.

All in all, I think the objectives have been met, and as Mayor Robertson indicated, we're generally pleased. Certainly we would write the policies differently if it were up to us, but I've been in planning for 25 years and I think this is a tremendous step forward for municipalities.

**Mr Robertson:** A lot will have to do with the interpretation, as the words say that the province is stepping out of it to a large extent, but if they step back in with

special purpose bodies, the bureaucracy is going to be just the same.

**Mr Grandmaître:** And you haven't seen the regulations yet.

**Mr Robertson:** Yes. If the spirit is carried out that the province is stepping out, great. But if it comes back in and you allow a special purpose body to be part of the vetting and the slowing down of the process, perhaps we won't have moved forward at all. We just get into a group of people who don't have accountability in a special purpose body, and there's no way to get the response back in a timely manner.

**Mr Grandmaître:** Especially when you look at the provincial interest, which is ambiguous at the present time. I think it'll have to be clarified in order to achieve what local municipalities really want, and that's power. Right now with the provincial interest designation, which we haven't seen a full definition of, I think it makes it very difficult for a local government to say, "Hey, we're going to have power," because we don't know what that real provincial interest is all about. We haven't seen the definitions or the regulations, which makes it very difficult for you to say, "Hey, we're going to have power, or more power than we had before."

**Mr Marshall:** I would say we're at the stage where it's "Stay tuned for the 11 o'clock news." We're halfway through the process, the spirit appears to be in the right direction but, as I indicated to Ms Haeck, the overlaying of policies and regulations may just tie us up in knots and make it very difficult for us to exercise our powers in the way that we're capable of doing.

**Mr McLean:** I can assure you that the ministry staff and some of the members of government are pleased to hear you here this morning, because you're telling us something that a lot of other delegations have not told us. Most of them are very much opposed to the legislation and you think it's great, to a certain extent, although we have nine different areas that you want looked at.

You talked about the OMB deadline. Do you feel there should be something in this legislation that would allow the OMB to have a deadline on any hearing that it may have?

**Mr Robertson:** Absolutely. As we stated, there should be some regulations that say, when the application goes forward, the least they should do is have a pre-hearing conference within three months. To say you have at the present time an OMB hearing, and it'll be some time in August 1995, flies in the spirit of this streamlining of the planning process. We're insisting that there is a pre-conference, at least, so you can sort out whether it's frivolous or not, maybe come to an arbitration or an agreement in that pre-hearing without even having an OMB hearing, commencing the hearing within six months and then having the board make its decision within 30 days of the hearing, in most cases.

**Mr McLean:** The other question I have is with regard to the time period for zoning, and you talked about 150 days. Could you give us a little more background on how that would be staged?

**Mr Marshall:** As you know, the zoning bylaw pro-

cess initiated with an application to the municipality and involved a very comprehensive technical review by municipalities, the region where they're involved in water and sewer, for example, and conservation authorities. There's usually at least a 30-day period, in optimum sense, for those various agencies to comment.

The staff has to develop a comprehensive staff report that deals with all the issues and then goes through an internal staff process, then to a planning committee of council and then a council meeting, just for approval to go to a public meeting. There's at least a month turn-around in terms of going through a public meeting and coming back to the planning committee and then going to council. When you start adding the commenting period, plus the time period to prepare a report, along with many other reports, going to the council, considering the council's schedules and to have the public meeting process, five months is a very quick time period to turn around a zoning bylaw, in my view.

1030

**Mr McLean:** In closing, you made a presentation apparently to Bill 120 to the housing and you indicated your comments were ignored, I think, if I read your brief right. I hope you have better luck in your comments in the nine points that you put forward on this one. Thank you for appearing.

**Mr Hayes:** I don't think it's a case of luck, I think it's a case of this government listening and we will be acting on several of these issues.

One of your concerns about subdivision approval—I just want to let you know that we have a proposed amendment for that, and I'll read it very quickly. It's an amendment to enable:

—“upper tiers assigned with the subdivision approval power to further delegate this power to a committee of council, to staff and to the lower-tier municipalities.

—“separated municipalities assigned with subdivision approval power to further delegate this power to a committee of council and to staff; and

—“upper tiers assigned with the official plan approval power to further delegate this power to a committee of council and to staff.”

I'm sure that will meet your concern there.

**Mr Robertson:** Yes, we're very pleased with that and we hope the committee will endorse that.

**Mr Hayes:** This is a proposal from the government side, and all members have had this for a little while.

I'd like to make one more comment, just to kind of clear the air on one of the issues. It comes up several times that people are saying they don't have the regulations. I do not know of any other piece of legislation where you've had the regulations prior to having the legislation.

**Mr Curling:** So you'll be different.

**Mr Hayes:** We should make that clear, and we shouldn't be playing games with words, Mr Chair.

**Mr Grandmaitre:** We're not playing games; we're telling the truth.

**Mr Hayes:** We have an implementation task force

that will be working on the regulations, on the guidelines and implementation, and this'll probably be one of the first times that I'm aware in this province where the regulations will be ready when the legislation is ready. That is where we are way ahead of the game from other previous pieces of legislation in the history of this—

**Mr Grandmaitre:** So where is the consultation on the regulations? And you're going to have this in place by December. Come on.

**Mr Hayes:** The consultation is done and every presenter that has come in here, whoever they represent, has representation on the implementation committee. I thought I'd make that clear, Mr Chair, and I hope it is.

**The Chair:** Thank you, Mr Hayes.

**Mr Ron Eddy (Brant-Haldimand):** I think we just heard a promise.

**Mr Robertson:** At the end of our brief, Mr Hayes, we did ask for additional consultation on the conflict of interest, which heretofore we haven't been involved in. John has been very involved in the planning components with the Sewell commission, but when you put that other part of the equation into this bill, we don't know where the regulations are at, and we'd appreciate it perhaps if you could arrange such a consultation.

**Mr Hayes:** Does somebody want to comment on that, because I can't comment on it.

**The Chair:** Is there a staff comment? Is that something that happens?

**Mr Peter-John Sidebottom:** As you know, the open local government component of this has been around since late 1991 and we've had consultations ongoing since this time. The draft legislation was sent out in 1991. We received almost 600 submissions during that initial consultation. There was an AMO-led provincial working group that looked at it and changes were made. As a result of all of that consultation, we end up with the open local government components of Bill 163 as they appear now.

At this time, I know of no plans for further consultation. We have provided the draft regulations for AMO. I understand they'll be commenting on not only the bill but also the regulations later this afternoon.

**The Chair:** We've run out of time. We want to thank the city of Brampton for coming and for participating in these hearings.

**Mr McLean:** On a point of privilege, Mr Chair: The parliamentary assistant has read that one amendment about four times. Perhaps it's time we had some other amendments that you plan on presenting so we can hear what they are.

**The Chair:** Okay, Mr McLean. Thank you very much for that comment.

ONTARIO HOME BUILDERS' ASSOCIATION

**The Chair:** We invite the Ontario Home Builders' Association. Welcome to the committee. Please begin any time you're ready.

**Mr Ward Campbell:** My name is Ward Campbell. I'm the first vice-president of the Ontario Home Builders' Association and I'm a home builder and developer in the



Hamilton area. With me today is Ian Rawlings. Ian is a planner in the Ottawa area. He became involved in the government's planning reform exercise when he was president of the Ontario Home Builders' Association in 1991-92 and he has closely followed the developments ever since.

Everyone who appears before this committee is representing a special interest and we are no exception. If we are any different, it rests with the fact that the Ontario Home Builders' Association represents two distinct interests. One is the home building industry in Ontario and the 125,000 men and women directly employed by it. The other is the 50,000 or so families who, each year, buy or rent one of the new housing units we have built.

Both of these groups have a very clear interest in a more streamlined planning system. The need for a streamlined system is going to be the focus of our remarks today. I understand we have about 30 minutes; our remarks should take approximately 15.

For the home builder, streamlining reduces risks and lowers production costs. For a buyer or tenant, it means responding to changing needs more quickly and producing more affordable housing.

Streamlining is not a new concern for the home building industry. OHBA's current concerns date back to the 1980s when the planning and approvals process was under enormous pressure and backlogs were driving up the cost of building lots. Back then we proposed a number of streamlining initiatives. These eventually found their way into the Streamlining Guidelines that were released in 1992.

Maybe an example will best explain the problem. When the Don Mills area was being developed in the 1950s, approvals took an average of nine months. Twenty years later, when the Erin Mills area was being developed, this average had quadrupled to 36 months. This was an average. In 1978, David Greenspan reported a case in which a seemingly perfect parcel of land took six years to get the approvals. By the end of the 1980s, six years was the norm.

If long approvals guaranteed good decisions, there may be less objection to them, but they do not do this. What they do accomplish is to increase production costs, and this has two effects. One effect of higher production costs is to increase the cost of housing. The other effect of higher production costs is to increase the financing burden which, in turn, increases concentration in the industry. Greater concentration reduces competition, one of the key market forces that helps hold down costs. This is why it is so vitally important to streamline the planning and approvals process.

When we first met with the Commission on Planning and Development Reform, we pressed the need for streamlining. This is a message that we have repeated over and over with both the commission and government officials whenever we discuss planning reform. Unfortunately, we are hard pressed to see much evidence of streamlining in the reforms that have been introduced.

Ian will now discuss some specific aspects of Bill 163 that will complicate and lengthen the process.

**Mr Ian Rawlings:** I would like to begin by putting my remarks in some context. The province has declared an interest in affordable housing. It has even gone so far as to set out a policy under section 3 of the Planning Act to ensure that this interest is protected.

I want to put a choice before the government. The choice is simple: Either the housing policy statement goes or Bill 163 goes. You can't have it both ways. You cannot say you want housing to be affordable while, at the same time, you continue to throw obstacles in the way of affordability.

Some of you may find this remark puzzling. After all, the minister and the government have gone out of their way to explain how the new policies and Bill 163 will lead to faster decisions. The theory is that the comprehensive and clearly stated policies will add certainty in decision-making, the decisions will be made within specific time frames and frivolous appeals can be identified and rejected. If it were all so simple.

#### 1040

We could spend the day talking about the first assumption. Suffice it to say that nobody outside of government thinks the policy statements are clearly written or will increase certainty, but we're not here to talk about the policies.

Bill 163 proposes that decisions be consistent with the new policies. Even if they were clear, nobody knows how a decision can be consistent with policies that conflict with each other. How do you ensure that 30% of your housing is affordable while you use up the limited supply of expensive urban land that must be consumed before a municipality expands its boundaries? And how will it ever expand these boundaries if it has to conserve "significant landscapes"?

My years in planning have taught me that the key to success is to convince everyone that you are balancing competing interests in the fairest and most reasonable way possible. People may not be entirely satisfied, but if they see there is balance, they are less likely to complain. By demanding consistency with preordained standards, this balance becomes more elusive than ever. That makes the search for it longer and more costly and it increases the likelihood of complaints and appeals to the Ontario Municipal Board.

The "be consistent with" framework, in my view, is a knee-jerk reaction to an unsubstantiated fear that provincial policies are being disregarded. I believe the framework should be abandoned.

One of the things that attracted me to planning as a profession was the idea that it made a difference. Good planning improves cities and towns and it improves the lives of the people who live in them. What I learned in the intervening years—and there are perhaps more years than I want to remember—is that planning also involves a lot of minutiae. Literally hundreds of minute decisions must be made about a subdivision. These decisions are both important and in need of constant fine-tuning.

Planning decisions also fall along a continuum. At one end of the continuum is the big picture of official plans; at the other end is the fine-grained detail in an individual

subdivision application. The general public clearly has an interest in the big picture and equally clearly should be involved in the decision-making process at that level. It is, however, less clear that they have an interest at the other end of the continuum, and it's very clear that society cannot afford to have the general public involved in that level of minute detail.

To say the least, it was startling to read Bill 163 and learn that the government has decided the public should be involved in all levels of decision-making. This was never discussed by the commission, at least not in its reports, and it was never discussed by the government, at least not with us.

The current system requires public meetings for official plans, official plan amendments and zoning bylaws. Below this level, the details are so fine they will not affect the general public. There are no clear benefits of public meetings for plans of subdivision, only costs.

This same argument could be made even more emphatically for redline changes. We can perhaps, if we need to, discuss what those are after our remarks. But to require public notice of these minor changes would serve no public interest and hopelessly bog the process down in red tape.

Our written submission to the government was handed out to you along with the text for these remarks. I commend that submission to you, especially section 3 that outlines specific proposed amendments that we feel are problematic.

I want to close by touching on the time frames for decisions in Bill 163. The time frames begin when a complete application is finally received and end when the approval authority has made a decision. We still haven't seen what a complete application is, by the way. This means that a very substantial portion of the approvals process is not even affected by time frames.

But the time frames have another problem. One of the big problems facing the housing industry is inaction. Under the current system, if you think a municipality or a review agency is dragging its feet, you can appeal to the OMB after 30 days. Under the new system an applicant's hands will be tied for much longer periods of time. The net result of all this is that nothing is being sped up by the time frames.

The government's planning reform exercise had three major objectives. One was to provide more protection for the environment, the second was to provide for more openness and accountability in decision-making about planning matters, and the third was to streamline the process and make it more responsive to changing needs. There's no question that the first two objectives have been achieved, the first in the policy statements, the second in Bill 163. But at best, only lipservice has been paid to the third. Approvals will take longer under the new system and, as a result, housing will become more expensive.

Thank you for your attention.

**Mr Curling:** What you've stated is consistent, of course, with the other home builders and other developers, small and large, who have indicated some of the

concern that you've expressed there. This is very well done, because the fact is you get away from the old rhetoric and right to the point.

One of the things that Sewell had stated in his report is that the policy itself should be reviewed, just as a plan should be reviewed, every five years. Cities change—the complexion, the direction—and you know it all. You are the planner. We are the politicians who hear the complaint itself.

Again, do you feel the government is hearing? Because as you said in your remarks, we're not here to discuss the policy, but we must discuss the policy, because everything is based on the policy. As you said, the confusion is there that that is said, so we cannot touch the rest of it.

Is there any strategy you'd recommend to us, my colleagues on this side, especially the Liberals here, who want to get the attention of the government that one has to discuss the policy because it has a bearing on the legislation? Furthermore, how is it that we can have it reviewed every five years like an official plan?

**Mr Rawlings:** I'm going to thank you for that question and I'll take a shot at providing you an answer. I personally and our association have been saying since about halfway through Mr Sewell's commission that the responsible process would entail putting the entire package out for consultation. That would mean the policy statements, the legislation, the regulations, the implementation guidelines. Let's see the whole package.

This is not the dance of the seven veils. We cannot responsibly deal with individual components when they're so inextricably linked one to the other. I would suggest to you that that commendation is still appropriate: Let's stop dealing with this process piecemeal. Let's stop the train that has been set on a track to have everything implemented January 1995. Let's take the time that is necessary to put the entire package out and have some responsible and intelligent consultation on it. Whatever time that takes, it should take, because at the end of the day the time frame is irrelevant. What's important is to do the job right.

**Mr Curling:** A quick question to you too, and that is well said. On page 2 of your remarks you said something that—and I want to address the fact about affordability and not-for-profit builders or developers. Your colleague previously stated, confirmed to me, that if subsidies from government stop, those who are in the business who are considered not-for-profit developers more or less who make a profit, if the government stops that subsidy, therefore the affordability aspect of it would just go: I presume all developers who are being subsidized.

1050

On the efficiency you said, and I want to read this for the record because it is so well done: "One effect of higher production costs is to increase the cost of housing. The other effect of higher production costs is to increase the financing burden which, in turn, increases concentration in the industry. Greater concentration reduces competition, one of the key market forces that helps hold down costs." Do you see that more subsidies will be coming to build so-called non-profit housing, and if you



see that coming and when that stops, what would be the impact on the affordability?

**Mr Rawlings:** I believe the concept of non-profit housing exists only as a consequence of the market's inability to provide affordable housing in and of itself. I do not by that remark suggest that there is some solution to that dilemma that would see non-profit housing disappear in its entirety, because I'm not so naïve as to believe that our industry, unfettered in the broad sense of the word, is able to provide all housing for everybody. But I am equally certain that, unfettered again, our industry can provide a much better job of providing a broader range of affordable housing.

In that context, I certainly see non-profit housing, if I can call it, subsidized housing—the potential exists, in my view, for it to be significantly reduced, for it to become a far less significant part of our annual housing production in this province. Two years ago virtually 50% of the production in this province was subsidized housing. Quite apart from my scepticism about how long we can afford to do that, I'm absolutely convinced that for this significant proportion of housing being built by the public sector, there is a capability and the capacity and an ability of the private sector to produce a significant component of it equally well at worst, and at best, far better.

**The Chair:** Mr McLean. I'm sorry, we went over six minutes.

**Mr McLean:** I have a question with regard to redline changes. You indicate that to require public notice of these minor changes would serve no public interest. What changes would you want to see made there with regard to the minor changes?

**Mr Rawlings:** I quite frankly have no difficulty with the way the process exists today in that for the large part, in my experience, where there is an identified need to make a minor revision to a plan of subdivision that might entail or involve a particular agency, you would approach that agency, get that particular agency's approval to the revision as well as the approval of the broader approval authority, and make the revision. End of story. It seems to work today. I'm not aware of it not working today. I am quite frankly rather at odds as to why, if it was an expressed intent to preclude that from happening, that would be.

**Mr McLean:** But in your opinion, it will slow—

**Mr Rawlings:** No question, because it involves sending out notice of that change to every agency and giving them 30 days to respond.

**Mr McLean:** The other question I have is with regard to time frames. It doesn't kick in until the complete application is finally received. We could be looking at three years before the application is finally received, or four years. There's nothing in the whole process that speeds that up.

**Mr Rawlings:** That's true, but I will give you an analogy. I left my home at 10 to 7 this morning and arrived here at Queen's Park at 10 after 10. I was 38 minutes in the air. Was my trip 38 minutes or was it something in excess of three hours?

Your point is well taken. Nevertheless, I think the time frames that you have in front of you to deal with by necessity require an application to be made, and so therefore you can only start that clock running at that point in time. My concern is, then, what those time frames are once the clock does start running. I believe the time frames that are encompassed in Bill 163 now are significantly longer than they are today.

**Mr McLean:** But some of the consultants and some of the planners that we have had before us have indicated to me that this process here will slow it up even more than what it is now.

**Mr Rawlings:** No question. As I indicated to you, for example, on the time frames that are associated with opportunities to appeal, currently for some applications those appeals can be made within 30 days. They would now await 150 to 180 days for those appeals to be made in the future.

**Mr McLean:** Thank you for appearing this morning.

**Ms Haeck:** You have provided some comments which are obviously echoed by other home builders' associations but which my constituents take some great exception with. The residents of St Catharines-Brock to a large degree want to be involved in the process of finding out what's going to impact their homes. Possibly you'd like to consult the Hansard of the meetings in Niagara Falls to hear some of the very clear comments made by people like Olga Pawluk, who represents a neighbourhood organization and who very much wants to be part of the process.

Mr Rawlings, particularly your comments on page 3 at the very bottom definitely are not something that I think a great number of the constituents that I represent would agree with. They would want something like the policies that we have put forward, that you would be "conforming" with them, as opposed to "be consistent with." They would like it stronger rather than weaker.

I also want to make at least a quick remark with regard to page 4. About halfway down, you make some comments relating to the complete application. I believe that if you consult the technical briefing that Mr Martin gave us at the first day of the hearings, he made it very clear that he has been working with a number of groups on facilitating this whole process and making sure that by having a complete application, it in fact deals with the needs of the various sides and everyone knows what they're dealing with, rather than the psychic experience that it currently is.

So if you wish to make some additional remarks, I'm happy to hear them, but obviously we do have some different perspectives from which we come.

**Mr Rawlings:** I think that really comes to the heart of the issue here. There clearly are different perspectives. You've referred me to some of my remarks and I will, not in rebuttal, also refer you to some of my comments, the comment in particular with respect to finding some balance and the issue of finding, um—excuse me.

**Mr Campbell:** I don't think that we object to the public being involved in the process. We want them involved in the process at the upper level, but when it

gets down to redline changes and some of the minor things, it's just going to add time and money to the process, Ms Haeck.

**Ms Haeck:** They want to be involved. They feel that as taxpayers involved in their communities they have a right to find out what's happening in their neighbourhoods. I guess I'm one of those who advocate that they should be informed as much as possible and involved as much as possible.

I know that Ms Harrington wants to get involved, so I really think—

**The Chair:** I would prefer that you ask your question now.

1100

**Ms Harrington:** Thank you for coming, Mr Rawlings, on behalf of the builders.

It is actually following up on Ms Haeck's question. First of all, I want to mention that you have stated that for both the first objective and the second objective—that is, the protection of the environment and, secondly, more openness and accountability in decision-making—there's no question that these two objectives have been achieved. I certainly thank you for that indication of support. But where we are concerned, both you and I and all of us, is about the third aspect, and that is the streamlining.

I want to pose this question to you. Two weeks ago we had Dale Martin here before this committee, and he talked about what he had been doing. The whole idea of what he's doing is changing the character of the process and making it less confrontational. To do that, you have to get people together right at the beginning. Do you not think that this streamlines the process? Do you not think that Mr Martin is in effect streamlining the process by bringing people together?

**Mr Rawlings:** I believe in bringing the different parties together at the outset of the process. In my comments with respect to involving the public with the official plans and zoning matters—those are the big-picture matters in official plans, the more detailed level with zoning bylaws—clearly I believe there's a benefit and a public good to be achieved by bringing all of the parties together at that time to reach a balance and try and resolve competing interests. No question. My problem, however, is that when you go to the next step of doing that, at the detail level of subdivision, I don't believe there is any balance between the gains achieved of involving them in that relative to the time frame that will be added to the process, number 1. So I have some difficulty with that.

I also want to say to you that despite the fact that the two objectives I suggested have been achieved—there's no question that they have—my difficulty of course is not achieving the third. You might, for clarity, understand me therefore to say that I think you've gone far too far in achieving the first two, and as a consequence of that you've found yourself floundering on the issue of streamlining. So I think, as I said in response to Mr Curling, we have to go back and take an appropriate time period to go and look at this whole package and try to do a better job of it.

I'm well aware of what Mr Martin is doing; in fact, I'm on his implementation task force. I was also involved in the Sewell commission on the chair's committee. So I have lived with this since its outset and I think it needs an awful lot of work.

**Ms Harrington:** I'm really pleased that the nature of the process is less confrontational, and that will help the process.

**The Chair:** I'm sorry, Ms Harrington, we ran out of time. I wanted to thank the Ontario Home Builders' Association for coming and for communicating your concerns to us.

#### CITY OF BURLINGTON

**The Chair:** We invite the city of Burlington to come forward. Welcome to the committee.

**Mr Walter Mulkewich:** Thank you very much, ladies and gentlemen of the committee, for having us. My name is Walter Mulkewich, and I'm the mayor of the city of Burlington. With me is Ros Minaji, one of our planners. When I conclude talking about some of the points we're making in our brief to you, I'll be pleased to answer questions, and I know Ros will be able to assist at that point. You should have had distributed to you by the clerk a brief that looks like so. What I will try to do, as briefly and as concisely as I can—and I see you're almost on time; that's very well done—is keep to my 15 minutes so that you can have whatever questions and so forth.

I do want to say at the outset that the city of Burlington is generally supportive of the Ontario planning reform initiatives. We're pleased with the creation of a comprehensive set of provincial planning statements and the increased emphasis on the protection of natural features and the possibility of establishing a development permit system, which we think has some interesting possibilities, and also with the clear definition of time frames for various approvals. There are, however, some concerns that the city of Burlington would like to raise, with the hope that solutions can be found and put into the bill before final reading.

The concerns are summarized. With respect to the Planning Act amendment, I'd like to deal with three areas: the role of the local municipality, development rights versus environmental protection and the committee of adjustment appeals to council.

First of all, dealing with the role of local municipalities, I want to emphasize the word "local." We're very sensitive to that at the local level. I know at the provincial level sometimes you just think of municipalities, and it's easier maybe to deal with regional municipalities because there are less of them. But we want to remind you that it's the local municipalities which are closest to the people and they're very, very important. Although Bill 163 has increased the planning responsibilities and powers of local municipalities, more emphasis has been placed on the regional level, and we're very concerned about that.

Within the proposed legislation, regional municipalities "must" prepare an official plan, but for local municipalities an official plan "may" be prepared. We think that the local planning policy should not be optional. We've



recently undertaken the adoption of a new official plan in the city of Burlington and we're well aware of the importance of planning. At the very least, we suggest that the wording of subsection 17(8) be amended to state "should prepare" rather than "may prepare" for local municipalities.

The city also notes that the approval of plans of subdivision is a function of the upper-tier municipality in a region but that within a county or territorial district a city becomes the approving authority for the subdivision process. You're going to have a situation where cities such as Brantford and Kingston, which are smaller than Burlington, will therefore be responsible for approving plans of subdivision, while in the city of Burlington that will remain under the authority of the region. We feel that's just plain wrong and sends the wrong message about local municipalities and local governance and the importance of local municipalities.

Since plans of subdivision implement municipal zoning bylaws and reflect local land use character, the new Planning Act should permit delegation of the approval authority for subdivisions downward to any lower-tier municipality.

I'm trying to summarize these things because I know you people can read as well. Going on to development rights versus environmental protection, I think the point I want to make is that in order to achieve the provincial goals of environmental protection, municipalities must be in a position to insist on the preservation of significant natural features without the necessity of their purchase by a municipality. How this is to be achieved should be an integral part of the policy statement, since ultimately the owner of a protected natural environment feature will seek compensation for this land.

Provincial planning legislation routinely has ignored the fact that when value is added by planning actions of municipalities, municipalities must then pay these enhanced values to buy parkland and other natural features beyond the basic subdivision park dedication. I can tell you that the effort to save woodlands in the past few years has cost our city millions of dollars. We feel the province must act to neutralize this fiscal and economic impact rather than continuing to frustrate the expectations of the public, the municipality and the land owners.

On the matter of committee of adjustment appeals to council, the city of Burlington does have concerns about the removal of the right to appeal committee-of-adjustment decisions to the OMB. Under the revised system as we understand it, councils will be reviewing the decisions of the appointed committees of adjustment to which they have delegated their power. Councils will therefore be faced with the dilemma of reversing or changing a decision made by their committee under delegated authority.

Councils fulfil a legislative function by developing and approving planning policy. It will be difficult for many councils to provide an impartial review of variances to their own council-approved zoning bylaws. In addition, these minor variances often involve disputes between citizens. Council would be forced to choose between the

positions of these citizens, and this review function could conflict with the primary role of a city council, which is mainly to represent all of its constituents.

There are a couple of administrative matters which we deal with on page 3, that the proposed Planning Act gives councils, the minister or approval authorities the ability to refuse to consider official plan amendment, subdivision and consent applications until the applications are complete and the required fees are paid. The bill indicates the legislated time periods to process these applications do not begin until the applications have been "perfected." However, no such refusal-to-consider provisions have been prescribed for rezoning and variance applications, and we note that for you to take into consideration.

#### 1110

Secondly, our legislated time frames should be consistent in the case where a rezoning application and official plan amendment or subdivision application are being processed concurrently. For instance, councils are given 180 days to consider an official plan amendment or subdivision application but only 90 days for a rezoning application. We feel these times should be concurrent.

With regard to the section of the act that deals with disclosure of interest, our council does have some points to make there. With regard to the financial disclosure statement, a provision of the bill states that if the Local Government Disclosure of Interest Act is proclaimed into force after 1994, every member of council or board to whom the act applies shall file a financial disclosure statement not more than 60 days after the act comes into force. Successful candidates in the upcoming municipal elections, and they're coming soon, may find that they have to provide certain financial information to the clerk that, had they known in advance, may well have influenced their decision to seek office. We feel the specific details as to what the financial disclosure covers ought to be included in the bill and not solely prescribed in the regulations. It should be clear. I know there's a form floating around, but it should be clarified and in the legislation.

The next point is very important to a number of members of our council and we'd ask you to take it into consideration: the need for a saving provision. We feel very strongly and object to the passage of disclosure-of-interest legislation which does not contain a saving provision for members of council who honestly believe they have no interest to disclose when in fact they do.

There could be many, many examples. I'll just give you one where a member of council happens to be a lawyer and that lawyer's partner in the firm has a file which that member of council has no way of knowing about. That's one example. There could be many others.

The local disclosure commissioner, we have no objections to that but we see there is no specific provision in the proposed act regarding the operating costs of the commissioner's office. Since this office is established by and responsible to the Legislature and since the municipality will not control the efficiency of the operation, this cost should be borne by the province. We feel that should be clarified.

With regard to closed meetings—we like to pride ourselves as being a very open government; we in the city of Burlington are and I think most municipalities are—you're proposing that a resolution be passed, before holding a meeting or part of a meeting that is closed to the public, stating the fact of holding the closed meeting and the nature of the matter to be considered. This requirement is cumbersome in that a resolution will be required every time an in camera session is contemplated. Reference in a procedural bylaw as to when a meeting is to be closed to the public should be considered sufficient. We want to be open, we want to move things along and we don't want to be too bureaucratic.

With the matter of acquisition and disposal of public property, the proposed amendments to the Municipal Act state that surplus public property must be declared surplus at an open meeting of council. We have no problem with that, nor with the statement that at least one appraisal of the property must be obtained, the proposed sale must be publicly advertised and that the report recommending the sale be considered in public.

However, we feel that matters related to the valuation of real property should not be debated in a public forum, and I think you can understand there are many reasons for that. Moreover, the city feels that more flexibility is required in the proposed legislation. For example, from time to time small, unmarketable parcels of land become available which can only be sold to abutting land owners. This happens all the time for a variety of reasons. The full public property sale procedure simply would be cumbersome and not really very appropriate in such cases.

These are a number of suggestions. We have tried to be very specific and therefore hopefully helpful to you in looking at ways in which you could improve the legislation. I've taken less than 15 minutes. If you don't have any questions, you could be even ahead of time, but I'll be very pleased to answer any questions and I know Ros would assist as necessary.

**The Chair:** Mr McLean, five minutes.

**Mr McLean:** Welcome to the committee and thank you for your brief. I have two questions for you. Mainly, the first one is a clarification with regard to establishing a development permit system. What do you mean by establishing a development permit system?

**Mr Mulkewich:** I can have Ros expand on that, but my understanding is that this could be somewhat of an alternative to a traditional zoning system and could be just as effective in protecting the public interest. The Niagara Escarpment Commission has a development permit system, and perhaps Ros could expand on that.

**Ms Ros Minaji:** We do have a certain area of our city which is neither urban nor rural and we think perhaps a development permit system can be something we could logically use to control the appearance of any development in that area. That was one of the suggestions that conceivably, within this new act, might be considered. We were just stating we thought it would be a good idea.

**Mr Grandmaitre:** Would that be a progressive building permit?

**Ms Minaji:** It would be similar to a Niagara Escarpment development permit.

**Mr McLean:** Would you expect all of that to be in the legislation so that all municipalities would have access to that same—

**Ms Minaji:** I think that's envisioned as a follow-up exercise to this legislation. We were just saying we would be supportive of that.

**Mr McLean:** The other question I have has to do with disposal of public property, your last issue that you read about: "From time to time small, unmarketable parcels of land become available which can only be sold to abutting land owners." I've been involved many years in municipal politics too and I know there's somebody in a back-lot property who may want to walk over that land, and it's their right to do that, perhaps specifically if it's leading to a lake or to water. Would there be an exception? I don't know how you would make an exception for that in the act that wouldn't affect all property that's public-disposal.

**Mr Mulkewich:** I think maybe that has to be thought out in terms of all the possibilities. But you say there could be a situation where this parcel has been used by the public for access. That may have been because it simply happened, and in fact the access was illegal and shouldn't have happened, because if it is city-owned property, it doesn't mean that it's necessarily public access. I think that has to be considered.

**Mr McLean:** It could have been set aside for parkland.

**Mr Mulkewich:** That's right. There are many parcels of land, if you start looking around, because of previous planning approvals, road widenings, purchases etc that, when you look at the details, the city or the municipality still owns and they're not declared as parkland. To be parkland it has to be declared as such by bylaw, and we know from experience that once you do that, it's almost impossible to do anything but to have it as parkland.

**The Chair:** Ms Haeck first and Mr White, if there's time.

**Ms Haeck:** I wanted to actually compliment the city of Burlington. I sit as Chair of the standing committee on regulations and private bills and your municipality came through with a bill relating to heritage, having the building permit in advance of getting a demolition permit. Many local architectural conservation advisory committees across the province really would like to see that take place in their communities. I want to give a kudo where I can.

You do raise some interesting points in your presentation and I actually just wanted to follow up very quickly with regard to the local disclosure commissioner. There are those who have recommended before this committee that the office we as members use for our conflict-of-interest statements could be expanded to provide that service. There are others who have recommended possibly another office. Have you got a preference? I know you make a recommendation, raise a concern, but have you got a preference with regard to that?

**Mr Mulkewich:** I don't personally have a preference



and this was not discussed by the council. It was not brought up as a preference. The major concern we had was, the way the act is presently stated, that we'd be asked to pay for something over which we have no control or jurisdiction. That was our major concern. We have no preference that I can suggest to you.

**Ms Haeck:** There's another point I'll follow up with your planner, maybe, outside and in the meantime defer to one of my colleagues.

**Mr Drummond White (Durham Centre):** Thank you very much, Mayor Mulkewich, for your presentation. You make some very interesting points. Of course, I want to pick up on one that's not even here: the issue of the protection of the environment. As my colleague pointed out, you've taken the lead in heritage protection and I'm wondering, in regard to your experience in terms of the protection of vegetation and natural heritage, whether in your opinion that should be enhanced within this legislation so that local municipalities could have that form of power to protect the trees and other forms of vegetation from being ravaged.

**Mr Mulkewich:** That is essentially the point that we're making, and we're saying that we've had some difficulty in doing it. I think, in fairness not only to the municipality but to the public and to the land owners, the rules and all the provisions should be stated up front and they should be in the legislation. Right now it's rather vague. The example that I gave in the brief is the fact that we have in the past three years purchased a substantial amount of woodland because there's no other way of obtaining it, and yet we feel it is that kind of saving of the natural environment—if it is important and consistent with provincial statements, there should be a provision within legislation that would make sure that kind of natural area is preserved.

1120

**Mr White:** So you would like, at the local level, to be able to regulate that preservation of the natural environment without having to purchase it all?

**Mr Mulkewich:** Essentially. Ros wants to add to that.

**Ms Minaji:** If I might just add, the fact that it would now be allowed to be zoned is extremely helpful to us. What we're looking for, though, is some kind of consistency in approach across Ontario so that different municipalities and regions aren't going about this in a different way, perhaps purchasing 50% or 25%. We need to know how these areas would be maintained, who would own them and do indeed the land owners deserve compensation for this open-space designation on their properties?

**Mr Gary Wilson (Kingston and The Islands):** That's actually one of the questions I had, so I'm glad to have that clarified. The other question I had has to do with minor variances and whether you can suggest, since you'd like to see the appeal process continue to the OMB, how the OMB might be able to facilitate the quicker processing of these appeals.

**Mr Mulkewich:** I think there are two areas. One is, I can tell you that in our municipality there are very few appeals to the OMB, and I think that therefore one of the things that should happen between the province and the

municipalities and the committees of adjustment is that you make the kinds of decisions for which there isn't a great deal of appeal. That's one thing. I think if you look at the record, you'll find that's the case in the city of Burlington.

Secondly, the question of what the OMB does to deal with its case load is a major one. I don't think that the problem at the OMB is committee-of-adjustment decisions. I think it's a lot of other decisions that it's been backlogged with. I think it's more important to consider the whole planning process and that's the purpose of the legislation: to make sure that there are fewer issues that get to the OMB in the first place, and that has to do with early consultation and making the system more confrontational and so on. I don't think it's in anyone's interests to have a lot of cases go to the OMB.

**Mr Eddy:** Thank you very much for your presentation. You make some excellent points that should be considered. I note in the presentation from another city they advised us that, in talking to the officials, the bureaucracy, the provincial staff have indicated that the government will not consider any further changes to the comprehensive set of policy statements.

Others who have come before the committee have said that after we do this exercise we are now doing, we should take the time to look at the entire package of planning proposals and completely review them: the policies, the legislation, the regulations and now the implementation guidelines that are being prepared. That would take more time, but I would ask you your feeling about that. Should the government indeed take the time to do that or should we get on with the bill as it's proposed, realizing that there will be some amendments submitted by the government and by the opposition parties?

**Mr Mulkewich:** I certainly am in no position to speak for council in this matter because that matter did not come up in our deliberations. I think I can say we generally welcome having clearly stated provincial policies in areas that are clearly of provincial interest, and therefore obviously what's in those statements is important. I would say that the amount of time you take may depend on how much consensus you've reached through these committee processes. Certainly our experience at the municipal level is that it's very important to try to reach that consensus on what the provisions would be. It saves time later on.

So I guess the short answer is that if you can't reach sufficient consensus at this level through this process that you're going through, if that's what you're talking about, likely it's time well spent to take the time and do it at the beginning.

**Mr Eddy:** That's consensus with the municipalities and the other groups that make presentations to us.

**Mr Mulkewich:** I would say so. Now, you've got a lot of stakeholders, and there's the difficulty. I think that's going to have to be balanced with a reasonable time line at the end of the day as well, because I think all the stakeholders in the system, whether it be municipalities, whether it be the private sector, are anxious to have these reforms in place and to have the certainty that comes with them. At a certain point I think you have to

recognize that certain things you may not have consensus on, and maybe it's eliminating those, and at that point a decision would have to be made.

**Mr Eddy:** I note your point about delegating the approval plans of subdivisions to the local municipality. I think that's an excellent point and I agree with that. Planning used to be termed "local planning," and it should be kept as local as possible, and that's what you're trying to do.

I agree with your point that there be some very small municipalities. There are some cities around the 20,000 mark in Ontario, separated cities, and separated towns even smaller. But why would the upper-tier planning staff and council want to be involved in that sort of detailed, time-consuming, costly conflict with the local municipalities? You may have some other reasons for wanting it delegated. I think you make a good point.

**Mr Mulkewich:** Clearly, the public doesn't understand this. The public doesn't understand why you have to have all these levels of government involved.

**Mr Eddy:** Exactly.

**Mr Mulkewich:** The public think they come to city hall and they should be able to get a decision. Frankly, we're going into the municipal election season and the public is speaking very clearly that they would like to see an end to this kind of duplication. They see it as duplication—

**Mr Eddy:** And conflict.

**Mr Mulkewich:** —and let's call it what it is. Simplifying things and bringing it down to the lowest level would become very, very important.

**Mr Eddy:** And very efficient, cost-effective, I suspect.

**Mr Mulkewich:** I would think it would have to be, yes.

**The Chair:** One last question, Mr Eddy.

**Mr Eddy:** I was very interested in your recommendation "that the province provide the legislation required to support the protection of those significant natural features identified by provincial policy without the necessity of public purchase or ownership," because many people have come before the committee complaining about the loss of development rights on significant natural terrain. It is a big problem, and I note your saying about enhanced values. I don't know how this would work, but I'd like to explore it, if you have any other comments. I think you make a good suggestion.

**Mr Mulkewich:** I think obviously the context within which we are making that suggestion is that if there are planning changes, whether they be through a rezoning or through official plan change, whatever the planning change is, whatever regulation or whatever legislation is put into place should recognize the fact that the zoning or planning change by the municipality does add value to that property, and that should be part of the total mix. That's all we're suggesting and that's the context. We're not talking about land grabs or being unfair to individual land owners.

**Mr Eddy:** Mrs Sullivan agrees with me that you've

been helpful to the committee, and we appreciate you coming forward.

**Mr Mulkewich:** I am pleased to see Mrs Sullivan here. As you know, she does represent a good part of Burlington.

**The Chair:** Mr Hayes, with some clarifications.

**Mr Hayes:** On page 4, about the financial disclosure statement, you comment about candidates not knowing in advance what is required of them, and of course their decision may have been influenced one way or the other. In fact, are you aware that we sent out in late May the form, the disclosure of financial information and instructions and general information, to all the clerks and requested that all the clerks contact candidates in the area who were running to let them know up front just where they stand and what is required of them? So we feel that we have done this and that was a way of preparing them.

1130

**Mr Mulkewich:** We're aware of that and I did mention in my comments that we're aware that—I think I put it that "there's a form floating around." I think our concern was that as we understood it, and correct me if I'm wrong, the form, which in fact I have seen a copy of and I do have it in a file somewhere back in the office, is a draft or suggested form and may not in fact be the form that is prescribed in the regulations when they are finally made. We're saying that the elections are coming up and there should be the certainty, so that even at this point there could be an announcement that the form that has been sent out and what is to be put in is what's going to happen. We don't have that level of certainty. If you could give us that level of certainty today, I think we'd be very happy.

**Mr Hayes:** Well, the level of certainty I can give you is that if there is any change at all, it would be very, very minor. So it's pretty well what you've seen on that form.

**Mr Mulkewich:** That's good to know.

**Mr Hayes:** The other point I want to make is, just to be very blunt, the cost of the commissioner will be borne by the province.

**Mr Mulkewich:** Will be borne by the province. Well, that's good news. We understand that there's only one taxpayer.

**Mr Hayes:** We're listening.

**The Chair:** I want to thank the city of Burlington for the submission they made to this committee today.

KATHRYN DEAN

**The Chair:** We invite Ms Kathryn Dean. Good morning, Ms Dean. I just want to say that you have 10 minutes for your presentation.

**Ms Kathryn Dean:** Yes.

**The Chair:** If you want the members to ask you questions, please leave as much time as you can.

**Ms Dean:** I'll try to be as fast as I can without skipping important things. Should I start now?

**The Chair:** Yes, please.

**Ms Dean:** I grew up on a productive, 150-acre farm in the heart of the Niagara Peninsula. This fruit-growing



operation sustained four families and provided seasonal employment for people who lived in the local community.

At the time, the Niagara Peninsula and much of the Golden Horseshoe were places of beauty and neighbourly community. Urban areas existed in balance with prosperous farms in areas like Niagara, Mississauga, Oakville, Markham. The farms provided Toronto, Hamilton, St Catharines and other nearby cities with food and the benefits of a healthy rural community.

In my lifetime I've seen the fragmentation and destruction of the Golden Horseshoe, and I would put it to you today that governments at all levels have acted irresponsibly in allowing the farming community to die in the Niagara Peninsula, and the Golden Horseshoe in general.

If this was just a question of personal grief over loss of a family farm, I wouldn't be speaking to you today. There are hundreds and hundreds of acres of broken farm lands, broken communities lying under pavement around Toronto, Oakville, Mississauga, Markham, Scarborough, former places of beauty to which settlers and, later, immigrants came because of its prosperous agricultural potential which allowed later commercial development.

What's happened is that the commercial and industrial development has fouled the nest, and I applaud the initiative that this government has taken in attempting to put through reforms that will hopefully stop the insanity that we're currently participating in by allowing rampant development, creating a megalopolis that will end up looking like Los Angeles, New Jersey, greater New York City, and will have with it the concomitant alienation and crime. It only makes common sense. We see the historical precedents, and now I am very grateful that we have a chance to stop this ridiculous development and create a community where we can have appropriate levels of commercial and industrial development but where the balance can be redressed.

Farmers and people in rural communities have been bulldozed, literally and figuratively, and it's about time that something started to be done about it. As Ralph Krueger said in a report that he wrote in 1958, and this isn't news, "Future generations will rise up and condemn us for our lack of stewardship if we don't do something to stop the foolishness."

Well, the foolishness continued: Some 8,800 acres of farmland in the Niagara Peninsula alone were paved over. Two to three times as much land was used in the Niagara Peninsula as was necessary; wastefulness, greed, shortsightedness, people working from paradigms that are now out of date that seemed like a good idea at the time. In the days of Toronto's own Mayor Gardiner, expressways seemed to be the way to do it. We know now that this is not the case. For future immigrants coming to the country, if we continue in the way we're going, we're desecrating a treasure that they should be allowed to come to.

Many of the principles, obviously, that I back are in the Sewell commission report, and I only regret that more from the Sewell commission report weren't included in the bill. But I'll move on to the bill now so that we can get into some specifics.

Where I feel that the bill is strong is where it has included provision for preserving ecosystems, agricultural resources and, I would note, land base as well. "Land base," as a phrase, is sometimes not included in the bill where it should be.

Time lines of decision-making at the municipal level: It is important that some of the bureaucratic struggle be eliminated, but in the process it appears that in certain sections this has been done at the sacrifice of public involvement. The idea behind the reforms, apparently, was that public involvement could happen earlier and later amendments would happen more efficiently. It seems the efficiency has happened at one end, but the public involvement hasn't been ensured at the other end.

Just as a case in point, there is one council which is proposing to eliminate the 30-day interval between the public meeting regarding amendments of official plans and the actual adoption of official plans. Presumably, that means you can have a public meeting about an official plan, with public input, and the next day the official plan amendment can go through. That may or may not be the case, but on the books it appears that way. That's a general principle that I'd ask people to address.

Also, it appears the drafting of the bill requires some improvement. I'm a copy editor of about 15 years' experience, and it appears that there are a number of inconsistencies. More precise definitions are needed; for instance, "significant wildlife habitat" in one of the sections. It's not clear what "significant" means. Agricultural resources are slated to be protected, as I mentioned, but not agricultural land bases, so there's presumably room for ambiguity there.

If I could ask you to flip to page 11 of my submission, notably in the purpose section there is material that has been included from the Sewell commission report that is helpful. However, certain terms have been deleted and new, confusing ones have been added.

The most significant of these confusing terms is the phrase "sustainable economic development," which was rejected by the Brundtland commission on the basis that the term "economic" meant that there wasn't the opportunity to embrace the broader notions of environmental, social, cultural and community development in addition to economic development. So it's very surprising to see it in the bill.

I would suggest that the word "economic" be struck from "sustainable economic development." In fact, the phrase "sustainable development" was also rejected by the Sewell commission, as I understand, because it has developed such ambiguity and perhaps is inherently self-contradictory in common usage now. So I have proposed a rewording, which you can see there, that is more specific and is more consistent with the recommendations on the final report of the Commission on Planning and Development Reform in Ontario on page 8.

Skipping over to page 13, regarding decisions of the council of a municipality etc including only the Ministry of Municipal Affairs, "shall be consistent with policy statements issued under subsection 1," the purpose statement appears. Obviously this doesn't bind other ministries to act consistently with this policy, and it would

only make common sense for a government's ministries to act in concert. So I would suggest that other ministries, as reworded in the rewording at the bottom of the page, and other government agencies, including Ontario Hydro, also be required to act consistently with the policies in the purpose section.

**1140**

Page 14, regarding contents of official plan: Notably, there was no provision for consideration of effects on ecosystems or again for protection of the province's agricultural land base, so my request would be for a stronger wording there, as you can see on page 14.

At the bottom of page 14, regarding public availability of copies of official plans, I've had this experience with a certain municipal council that documents were supposedly available. Well, "available" meant between 8:30 and 4:30, Monday to Thursday. This particular council was using it as an excuse perhaps to have Fridays off.

*Interjection.*

**Ms Dean:** That's right. This meant that in a particular instance it was very difficult to get hold of documentation, because the people involved were only able to be there out of office hours. I would make a request that there be accommodation for that. This same council has passed a bylaw to make it possible to hold confidential meetings, which are not in accordance with MMA guidelines.

I would also make a request that there be some provision for enforcement on the part of the province to come down to make sure that municipalities are acting according to the law. I don't think it should be incumbent on a private citizen to bring a city council to court because it's not following correct procedure.

At the bottom of page 15, regarding council's prerogative to set a time limit for comments on written copy of the official plan before the adoption of the plan, again, I feel that gives the city council too much power. You will see on page 16 too that the city council also has the prerogative to decide who has an interest in receiving certain documentation. I've proposed a rewording at the bottom of page 16.

Flipping over to page 18—and then I'll leave it open for a few questions which you may have—regarding the power to rule regarding minor variances, I understand there is the thought that this will help clear up bureaucratic backlog. But it is to be pointed out that the large majority of the cases do come from the city of Toronto.

As I propose here, it may be appropriate to isolate or group together truly minor variances, such as someone wanting to construct a back porch that goes across the property line, and treat them more like traffic court. This still would be a division of OMB, so there would still be an independent body to which private citizens may appeal. Then the OMB can get on with the business of the major appeals.

I insist on the point about the minor variance just because a particular council has used the tactic of rezoning—this isn't minor variance; this is even one step up—in particular zoned areas an incompatible zoning use. Then in a meeting I had with one staff member of this

council, they suggested that now the entire area should be rezoned to the incompatible use, incompatible with official plan. In other words, this is incremental rezoning, and that shouldn't be legal.

That's quite a race through the documentation. I know you have a lot of documentation; I'd appreciate it if you could possibly read it. I would like to say I appreciate the initiative the government's taken.

**The Chair:** Thank you very much, Ms Dean. Unfortunately, if we get into questions, it will take a long time and that would delay us with the next submission. So we just want to say that we appreciate the personal interest you've taken in this bill and the brief that you have made to this committee. The members, of course, have listened with interest.

**Mr Eddy:** Could I just add and acknowledge the real concern expressed about preserving agricultural land.

**Ms Haeck:** Absolutely.

**Mr Eddy:** That's really a deep concern here.

**The Chair:** I agree. Thank you.

**Ms Harrington:** Thank you very much for all the work that you've done.

**Ms Dean:** If I could add too, it's not just for farmers. I believe the entire community will be degraded with the complete debasement of the agricultural community, and we have to be thinking of new forms of agriculture, CSA—community-shared agriculture, that is—new configurations of urbanization, such as intensification and so on, so that we all can survive better.

**The Chair:** Thanks very much.

MORRY SMITH

**The Chair:** We invite Mr Morry Smith. Welcome, Mr Smith.

**Mr Morry Smith:** Thank you for this opportunity to say a few words. As one who has been active in ratepayer and municipal affairs in North York for many years, may I present the following recommendations for your consideration. I have six suggestions that I believe could improve local government.

First, the planning procedure: Besides stressing the streamlining of the planning process, emphasis should also be placed on improving the integrity of the process. Nearby residents and ratepayer groups should be given an opportunity to express any concerns regarding new developments before, not after, planning staff make their recommendations.

The present procedure in North York, for example, is completely unsatisfactory. Planning staff first meet and discuss development proposals with the applicant and make their recommendations. These then go to a meeting of the planning advisory committee to which only the applicant is invited. Only after this stage is the public notified and asked to attend a public hearing. Unfortunately, by this time everything has already been decided.

Perhaps I should give you an example. About two or three years ago, I appeared before the planning advisory committee on behalf of our local ratepayer association. We were objecting to a high-rise development that was going up along Yonge Street, and our objection basically



had to do with the fact all these buildings were going up right against the edge of the sidewalk. We felt that was not the way to make downtown a people place. The building should be set back a little bit from the street. There should be wider sidewalks. The public would be able to have room to walk and there would be room for a few trees, some flowers, some benches and so on.

During the meeting, one of the councillors who is on this committee agreed fully with us. She also said: "That isn't the way North York should do these developments. They shouldn't be a bunch of cereal boxes right against the road practically." But they all voted for the application to go ahead.

So after the meeting, I approached her and I said: "Well, you know, you supported us. Why didn't you make a motion to that effect?" She said, "Well, at this stage of the game, it's too late to make any changes." Now, this was the first opportunity ratepayers had to put any input into it. If it's already too late in the game to make any suggestions, the whole thing is a farce.

Second, the committee of adjustment: A clear and detailed definition of the term "minor variance" is required so that everyone will know what variances can be decided by this committee. At present it seems that only the committee of adjustment itself decides what is within their jurisdiction and can define major changes as minor variances.

In North York, the committee of adjustment, for example, often deals with applications to divide a single lot into two lots, each with insufficient frontage to meet the minimum requirements. In an area of 50-foot minimum frontage, they divide a 60-foot lot and permit two homes each with only 30-foot frontage. Is this a minor or a major variance? If council approves the decision, what is the procedure for residents to request a judicial review by the courts? It's all not very clear in this Bill 163.

It seems to me that a definition of minor variance, for example, 10%, would be a better, simpler and more economical way to solve these types of problems. Or I would suggest to leave the possibility of appealing the committee of adjustment decisions to the OMB, as is now the case.

Third, limit the terms of office: Members of council and local boards should be limited to two or three consecutive terms in office to allow new people with fresh ideas to serve the community. After the term of office is over, incumbents can take a leave of absence or run for some other level of government. At present it is very difficult for unknown newcomers to defeat established councillors, many of whom have over 80% of their election expenses paid by developers.

1150

Fourth, limit spot-specific rezonings: What is the use of spending substantial time and money carefully drawing up official plans every five years if councils ignore them by permitting spot rezonings? In my view, the present system is an invitation to bribery and corruption and works against the public interest. Traffic and other laws have to be obeyed by everyone until such time as they are changed. Why should the same not hold true for our

building and zoning laws? New official plans should decide what changes are necessary, rather than developers requesting changes.

Fifth, clarify the conflict-of-interest rules: The present regulations are a sham as long as they allow councillors to accept substantial election contributions from developers but do not prohibit them from participating in the consideration of rezoning applications submitted by the same developers. Is it any wonder that those who pay the pipers end up calling the tune? It is questionable whether the \$750 maximum that any one person can contribute to a candidate and the disclosure requirements under the Municipal Act provide adequate protection of the public interest. The recent convictions of York councillors demonstrate this. Candidates usually hold fund-raising dinners long before their election campaigns, and I am not aware of any law that limits the number of tickets one can purchase.

Sixth, intervenor funding at OMB hearings: For citizens and ratepayer groups who care about their community, proper legal and planning support is essential at OMB hearings. For example, North York sends its staff to support developers when residents object to rezoning applications, but our own local ratepayer association had to hire a planner to defend North York's official plan for our area, as the city refused to send a planner to defend its own official plan when a developer opposed it. To eliminate frivolous appeals, perhaps funding of individuals and citizen groups should be limited to 75% of their expenses. I believe that this would be money well spent in protecting the public interest.

I trust that you will give the above suggestions due consideration and that your work and recommendations will succeed in improving our local government. Thank you very much.

**The Chair:** Thank you. There are five minutes remaining. If people want to ask a question, we can allow that.

**Ms Haec:** Just a quick question. I really appreciate your taking some time. I think it's important that citizens get involved in this process, as well as some of the other agencies and groups that have come forward.

You raise one of the thorny issues that we've tried to deal with in the last couple of weeks, and that's how to define the term "minor variance." We see things locally where projects are doubled in size and that's handled under a minor variance. How would you assist us in giving us a limitation of what really, truly is a minor variance?

**Mr Smith:** Well, at the Sewell commission I presented basically the same brief. I remember John Sewell suggesting that he thinks perhaps a limit of 10% variance from whatever zoning and building regulations exist in that area should be the limit that they should be able to go. That would be at least a rough idea of limiting what they can do. Otherwise, what we're having is, many things that should go through the planning process are going through the back door via the committee of adjustment.

**Ms Haec:** A little supplementary?

**The Chair:** All right.

**Ms Haeck:** If in fact you have, let's say, an industrial development or a commercial development which is of a considerable size, 10% of 180,000 square feet or something is still a substantial amount. Would you propose that there would be a different process according to whether or not it was zoned residential or a commercial matter to basically reflect what would normally be a difference in size? Most commercial developments tend to be larger than residential, but I would defer to you as far as a comment in this regard.

**Mr Smith:** I don't see any problem with that. It would be up to the committee to decide these things. Basically, I think some rules should be set down. It shouldn't be the way it is now where the committee of adjustment itself decides what's minor and major and can decide anything. At least up till now we could appeal the matter to the OMB. Now we won't even be able to do that, and I don't know what the procedure is as far as Bill 163 that I read; I didn't see any procedure how citizens can go ahead and appeal their decision.

**Ms Haeck:** We're definitely hearing a lot about this, so thank you for your remarks.

**Mr Grandmaître:** The fact that you cannot appeal a decision of the committee of adjustment: Don't you think 10% is very generous?

**Mr Smith:** I just threw out what John Sewell suggested. Perhaps you can make it 5%. I think there should be some limit as to what is their authority so they themselves would know. Right now neither they know nor the citizens know nor anybody else knows.

**Mr Grandmaître:** You're absolutely right. Nobody around this table knows what a minor variance is.

**Mr Smith:** I think that is a deficiency in Bill 163 that you should certainly address.

**Mr Grandmaître:** Let's hope that the government, before third reading, can define minor variances. I would like to see maybe a 2% or maybe a 3% difference, but not a 10%; 10% is quite—

**Mr Smith:** I didn't make that recommendation. I just threw it out as a suggestion that John Sewell had thrown out.

**Mr McLean:** Thank you, Mr Smith, for appearing before the committee and expressing your views. I want to ask the parliamentary assistant the very question that you have asked. Is that a minor or a major variance? What's the government's position on that?

**Mr Hayes:** Which one are you talking about there, Mr McLean?

**Mr McLean:** Well, if you want to split two lots. Is that a minor variance or a major one?

**Mr Hayes:** In my opinion, it would be a major, if you want my opinion, but I'll let the staff respond back there.

**Mr McLean:** Right.

**Mr McKinstry:** Maybe I could clarify. Committees of adjustment in fact have different roles. One of those roles is of course to grant minor variances from zoning bylaws. Another of their roles, if they're given that authority by council, is to create land severances, in other

words, split lots. In this case, it was probably them acting in that other role, rather than granting minor variances.

**Mr Smith:** My understanding is, splitting a lot does not come under—the question is that when they allow homes on these lots, then they're minor or major variances.

**Mr McKinstry:** And they may or may not have had to have a rezoning or a minor variance. I don't know the situation here.

**Mr McLean:** But they would have to be rezoned?

**Mr McKinstry:** One would think they would have to be rezoned, yes.

**Mr McLean:** So it would be a major amendment to the official plan and zoning bylaw to allow that to happen.

**Mr McKinstry:** To the zoning bylaw.

**Mr McLean:** So that would not be classified under a minor variance procedure.

**Mr McKinstry:** No.

**Mr Anthony Perruzza (Downsview):** No, but severances, I remember cases where the city of North York committee—

**Mr McLean:** Thank you for appearing before the committee today.

**Mr Perruzza:** —severed a 22-acre lot from the city limits.

**Mr McLean:** You're out of order.

**The Chair:** I know you're trying to be helpful, but he has the floor. I'm sorry. Go ahead, Mr McLean. Please, one more.

**Mr McLean:** I'm finished. Thank you.

**The Chair:** All right. Ms Haeck has a question of staff then.

**Ms Haeck:** Yes, I do, and I would like to actually ask staff if they could give me a written comment but share it with the other members of the committee.

Ms Ros Minaji from Burlington raised I thought an interesting point, that she felt development permits would provide municipalities the opportunity to regulate appearance. She definitely used the word "appearance," and I would like to get an interpretation, an opinion, from staff as to whether a development permit would in fact allow that and under what circumstances, because very clearly this is something my residents would be very interested in, and I'm quite sure other people would be as well. So I thank you for any help you can give me.

**The Chair:** Do you want an answer at this time?

**Ms Haeck:** It can happen later. That's fine.

**Mr McKinstry:** Okay. We will prepare a response to that.

**Ms Haeck:** Thank you very much.

**The Chair:** Mr Smith, we want to thank you very much for taking the time to prepare and to present the submission to us.

**Mr Smith:** Thank you for taking the time to listen.

**The Chair:** We appreciate it.

One last comment. I think one or two members may



have raised the issue of inviting the Minister of Environment and Energy to speak to the issue of septic tanks. I'm not sure whether there is a general interest by all of the members and I'm canvassing to see whether that is the case. If that is so, we will then need to find some time to include them, which would leave us September 19 as the date. If that is something you all want to do, we either meet with them some time during that lunch period or at the end of the delegations, which would be at 6 o'clock.

**Mr Grandmaître:** How many delegations do we have?

**The Chair:** We will go from 9 till 6.

*Interjections.*

**The Chair:** Can we just arrange—

**Mr Grandmaître:** If you buy lunch, we'll go.

**Mr McLean:** The last delegation is 5:30 in the afternoon, according to my schedule.

**The Chair:** So it would get us till 6. So it's either after 6 for half an hour or during lunch, 12 to 12:30 or 1 to 1:30.

**Mr Eddy:** We agree with either or both. Whichever you would like.

**The Chair:** Any preference? Leave it to us?

**Mr McLean:** Is it going to be the minister or staff?

**The Chair:** Sorry. It would be some staff members that we would be inviting.

**Mr McLean:** I wonder if they could send us a brief ahead of time so we could have a look at it, have an idea of what they're going to present.

**The Chair:** We could try to do that. We would ask them to appear, but if they have a presentation that is prepared, we could ask them to send it to us in advance. All right?

**Ms Haeck:** I think everyone's in agreement.

**The Chair:** Very well. The clerk and I will attempt to fit it in either after 6 or during that lunch spot. Thank you very much. This committee's recessed until 1:30.

*The committee recessed from 1201 to 1339.*

**The Chair:** I'd like to call the meeting to order.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

**The Chair:** I would call upon the Canadian Environment Law Association, Ms Kathleen Cooper. Welcome, Ms Cooper. Just as brief reminder, you have half an hour for your presentation. Leave as much time as you can, please, for the members to ask you questions once you've given us your main ideas.

**Ms Kathleen Cooper:** I would actually like to keep this as informal as possible and have lots of questions because I've put together this brief and that was enough work. So I didn't put together speaking notes. I also want to apologize for—

**Mr Curling:** You're assuming that we've read it already.

**Ms Cooper:** No, no, I realize you've just gotten it. I will go over it for you briefly. I also want to, off the top, apologize for single-sided photocopying. We have a very

tired old photocopier that can't handle double-sided copying. It's very embarrassing, but there you are.

Just by way of introduction to this submission, this work is the culmination of three years of effort on the part of staff in our organization, as well as joint work with environmental and citizens' groups from across the province for three years and work before that as well. So the recommendations that are made here reflect the concerns of those groups, who have considerable direct experience with the land use planning process.

There are two major themes that run through this brief in terms of making suggestions for changes to Bill 163. The first is, we feel there's insufficient attention to environmental protection and we have a number of recommendations to address that, and then the other major area is insufficient attention to matters of what I've called process integrity.

In the area of environmental protection, the concern I would raise, which I've raised here and drawn from research of looking at all of the submissions that were made to the Sewell commission, is that there was a broad consensus built during the Sewell commission consultation that I think needs to be more adequately reflected in this bill, and that can be done and can preserve the intent of what was passed in the Legislature on second reading.

Off the top, including environmental protection is one of the purposes of planning, and we've made suggestions for using language that the Sewell commission recommended. We specifically don't like the use of the words "sustainable economic development." If you must use those words, then drop "economic" because it's a much more narrow interpretation of what sustainable development is supposed to be about. But even better, I think what the Sewell commission recommended is preferable, so we have recommended that.

The other major area to improve environmental protection measures in the act would be to incorporate into section 16, which has to do with content requirements, first, that the language of section 16 be changed so that it builds in ecosystem protection, and we've made suggestions for language. All the way through we've made specific language suggestions for how to make these changes in the bill.

The second thing is the second section of section 16 that has to do with an optional prescribed process. It is a mystery to me why you would have a prescribed process that would then be optional. We think that process for dealing with the overlap and problems between the Environmental Assessment Act and the Planning Act could be much better addressed, and we've made suggestions for doing that and also recommendations for you to ensure that the elements of content requirements and the procedures for environmental planning are amplified by two associated regulations.

I should add that I'm involved with the implementation task force and am very keen on working there as part of the mandate for that task force on those regulations—and others, of course.

Very briefly, two major additional environmental recommendations are with respect to section 34 and the

setting of bylaws to restrict the use of lands. We've suggested a change there to support the intent of the policy statements on natural heritage protection.

Also, on the matter of pre-approval site alteration, we've suggested, as was suggested over four years ago by Ron Kanter and by many others in between, that there be a prohibition in the Planning Act for site alteration prior to receiving planning approvals. Then, in the alternative, if you decide to stick with what you've got in the Municipal Act amendments, we think that the setting of bylaws on this matter should be mandatory, not optional, and that the matters to be controlled prior to the granting of approval should be expanded to include removal of vegetation and fill. We've given you a list of items that ought to be included there.

On the other broad area of what I've called process integrity, there are a good 15 or 20 recommendations in here having to do with ensuring that the province and municipalities effectively implement this new system.

The most important one is the change that has been made to subsection 3(5). We strongly support the stronger language of "shall be consistent with." However, an additional change has been made to subsection 3(5) where the drafters of the bill have taken out the crown, essentially, and only have this section now applying to the Ministry of Municipal Affairs.

This matter was not raised during the consultation, either during the Sewell commission consultation or by the government when it consulted on this change to subsection 3(5). It was not a matter debated during that consultation, nor was it raised as a concern during the consultation. I've combed through all of the submissions. Other issues were raised about concerns about limiting flexibility at the local level and the impact on existing policy statements, but this notion of restricting the purview of subsection 3(5) to the Ministry of Municipal Affairs we think is unacceptable.

We've made suggestions with specific language changes to bring the crown back into subsection 3(5) by adding specifically, "all other ministries, the joint board"—and there's an error in the executive summary, actually; it should include the joint board—"the Environmental Assessment Board, the Ontario Energy Board and Ontario Hydro." The way the bill is worded now, only Ontario Hydro has to "have regard to" policy statements. Other ministries don't even have to do that any more, and that's a very serious change and not one that's supported by the consensus that was developed during the consultation.

I'm going to just briefly touch on the range of other issues that we've got in here having to do with access to the process. We're concerned about having to pay the fees prescribed under the Ontario Municipal Board Act in order to send planning applications forward to the OMB. These fees can be very, very large in some cases if a matter is very complex, and for citizens' groups, having to pay those fees would be a financial barrier to participation at the OMB and to access to that process. It's not a barrier that currently exists at the Environmental Assessment Board, for example, so we've suggested that that be changed.

On the grounds for dismissal of referrals and appeals, there are two serious problems that we've identified in there where we've made suggestions for change. We disagree with the notion of adding in "valid land use planning grounds" and suggest it be deleted or, in the alternative, if it stays in there, that it be specifically linked to the purposes of planning, to the policy statements and to the matters of provincial interest in section 2.

As I believe you've already heard others say, the ability to dismiss referral and appeal requests on the basis of citizens not having made oral or written submissions at public meetings we feel is really a denial of basic democratic rights and should come out of there. It does not recognize the problems that people face in their lives in being able to participate in these decisions that affect them in their communities, and we think it should come out of there. If it stays, it absolutely must be accompanied by changes to the notice requirements, where you ensure that people know not just at the public meeting but in advance, in the notice, that these grounds for dismissal exist.

A related issue is full access to information, so you can actually make a decision about whether you have a concern and want to raise it, and access to information outside of regular business hours, in recognition of the fact that you're talking about volunteers here who are doing this outside of their own regular jobs.

I've skimmed over a few other points. Finally on the matter of minor variances, I laboured over this a lot and discussed it with a lot of people. People are very concerned about no longer having the ability to appeal minor variances, and the conclusion that I've drawn from this is that yes, there's a problem with too many minor variance appeals going to the OMB, and it's a reflection of the provision of minor variances being abused. So don't take away the appeal rights; fix the problem. Put in the definition of minor variances and constrain the ability to use it, and then you won't have as many appeals because the provision won't be abused. That seemed like the most logical recommendation there.

That's skimming over a lot of different areas, so I'll just stop there and take questions.

1350

**The Chair:** That gives us approximately five minutes per caucus. Mr Eddy, to begin.

**Mr Eddy:** Thank you for your presentation and the important matters that you've raised. We understand that the timetable for the passing of the bill is later this year, but several people have said we should review the entire planning package, that is, the planning policies—and they're not under review at this time, of course; they're there, they haven't been reviewed and we question the amount of input into them—the legislation, the regulations, and you've mentioned the implementation guidelines, and that we should be reviewing the entire package so we know what is going to come into being. What would be your view on that suggestion?

**Ms Cooper:** On the policies, I support the government's position of closing the debate on them. I don't believe that we have had limited debate; I think we've



had extensive debate on policies both during the two years of the Sewell commission consultation and then afterwards. What we've got in this final package, as far as I'm concerned, warts and all, we should hold onto because I think opening them up again is just going to start raising exactly the same debate and issues that we've gone over and over and over.

I think that we have a set of policies that are acceptable and that the implementation guidelines that are being developed will, if that process works—and it's trundling along. It's pretty good in terms of, people are meeting deadlines and we're working on the task force to provide the input, and other stakeholders are as well.

In terms of reviewing the entire package, I think that's what we are doing right now, certainly in the work in putting this together. I make these comments in the context of dealing with those other elements of the package, having dealt with them up till now and continuing to deal with them in the task force, and I think people have that opportunity. I just think there's a historic opportunity here that we should not let pass. All of us across the province have been involved in this and it's been an incredibly extensive consultation. We have done an enormous amount of work. Let's finish it.

**Mr Eddy:** Thank you. It's been pointed out there is conflict between the policies, and that's why I wanted your opinion on it.

The task force developing the implementation guidelines: You wouldn't be aware of the proposed government amendments to the legislation or to the regulations at this time.

**Ms Cooper:** I'm keen on seeing them.

**Mr Eddy:** Is that a difficulty, do you see, or not much?

**Ms Cooper:** Yes, it's a difficulty and it's been a judgement call for me in knowing how to respond to the bill because of what's in the regs. At the task force we are seeing draft outlines and then drafts of regs and are able to contribute to their development. The fact that we haven't seen the government amendments certainly is a problem; exactly. We have to see how this is all going to take shape and work together, but I just consider that to be part of the job that I have over the next four months.

**Mr Eddy:** We may have amendments too, but of course the government amendments will be seen as more important. Go ahead, Mr Grandmaitre.

**Mr Grandmaitre:** Maybe my question should be directed to the parliamentary assistant. As you know, subsection 3(5) has been mentioned by just about every group that appeared before this committee, wanting to broaden the environmental to include all provincial ministries, the Environmental Assessment Board, the Ontario Energy Board and Ontario Hydro. Is it the position of the government that an amendment will be brought in? Is it your intention to broaden subsection 3(5) to include Ontario Hydro?

**Mr Hayes:** A very good question, and it's an issue that many people have raised in this committee. We are certainly looking at making some changes to address that situation.

**The Chair:** There you go.

**Ms Cooper:** We've tried to recommend specific language to be helpful in all cases.

**The Chair:** Last question.

**Mr Curling:** Do you know about this study we've talked about, A Proposed Action Plan for Looking Ahead: A Wild Life Strategy for Ontario? Are you familiar with this?

**Ms Cooper:** Who's the author?

**Mr Curling:** It was prepared by the Wild Life Strategy Action Plan Ad Hoc Committee on behalf of the wildlife forum.

**Mr Eddy:** For MNR, the Ministry of Natural Resources.

**Ms Cooper:** I haven't seen that specifically, no.

**Mr Curling:** Well, we just got a copy and we gather that some people have gotten it. We here have not been privy to that. I just wondered—

**Ms Cooper:** Can I have a copy?

**Mr Curling:** Well, this is the only copy that I have, you see.

**The Chair:** Mr Curling, I'm sorry. I don't want to interrupt you, but—

**Mr Curling:** You are, though.

**The Chair:** Yes, but when I ask you to make a short question, you should place it. Otherwise we go way over time.

**Mr Curling:** I would have done that while you were talking, actually.

But you said you have not. It seems to me that if we had had that, if there were a great input into the planning and amending of the Planning Act itself—but I understand you don't. Neither there has the minister seen it itself. I just wanted to know if you had, that's all.

**Ms Cooper:** There is all kinds of other work that's been done that's been valuable input to this reform effort. I'm sure that's just as valuable, but there's been lots and lots of other work done as well.

**Mr McLean:** Welcome to the committee, Ms Cooper. I have three questions I wanted to ask you.

One is with regard to minor variances. You made it clear here that the new definition be included in Bill 163 to define "minor variance": "minor variance" means development or use of land, a building, or a structure that, while not in conformity with the bylaw pertaining to the land, building or structure, does not deviate significantly from the use or development permitted by the bylaw."

That's "deviate significantly." If I was putting up a four-storey complex and wanted to add another floor to it, would you classify that as a major modification and not a minor variance?

**Ms Cooper:** It depends on what's in the official plan and the secondary plan for that area. But if you're talking four storeys up to five storeys, you need to be considering the impact that has on the local infrastructure, the hard and soft surfaces, everything. So it's hard to respond. You need to know the site-specific issues.

I'm aware of a situation like that, and I don't know if you're using a specific example, where exactly that kind of situation existed. It was in violation of the plan. It was appealed to the OMB and the OMB ruled in favour of the fact that it was not a minor variance.

**Mr McLean:** Right. Okay, we've been having some difficulty getting some clarifications.

There was a delegation here that indicated that maybe hearing times, OMB should have a deadline, that when after three months they have looked at it and seen whether they're going to go through with an OMB hearing, there should be a deadline put on when that OMB hearing could be held. Would you agree with a deadline?

**Ms Cooper:** The issue of putting time limits on all of these various decision points has been dealt with fairly well in the bill. I'm not sure exactly which deadline you mean. You mean if you've already sent your referral; it's been referred and the OMB has to decide?

**Mr McLean:** Yes, they're going to now deal with it; they're going to accept that they will deal with it. Should there be a deadline of how long they should have to deal with that?

**Ms Cooper:** I would support things happening faster at the OMB, but if they can't meet the deadline, that doesn't mean that they should never hear it. I mean, you'd have to add that.

**Mr McLean:** Okay, fine. The other question I have is, "Delegate authority to staff." That goes back to the minor variances and some of the modifications that are not being objected to. Would you agree that staff should be able to do that, senior planning staff in a municipality—Burlington, say?

**Ms Cooper:** Yes.

**Mr McLean:** Great.

**Mr Gary Wilson:** Thank you for your presentation, Ms Cooper. I think you provide a very good example of the amount of work that has gone into not only the hearings on the bill, but the prior consultations that went on in the last two to three years. I certainly commend you and I'm sure the committee does as well for it, because it really helps in our deliberations.

Although I haven't checked out to see exactly what you say on "sustainable economic development," you like Sewell's wording. Can you think of why it was changed to "sustainable economic development"?

1400

**Ms Cooper:** I asked, and the idea was they wanted to come up with balance. I think maybe the drafters of the bill wanted to shorten what Sewell tried to explain in his language, what "sustainable development" essentially means. It's a multifaceted notion. The problem that happens with "sustainable development" is that it's just such a weasel term. It's an oxymoron to some people. It's not useful, and then adding "economic" in there is really problematic. The Brundtland commission didn't even try and do that. I think the language that the Sewell commission recommended is preferable.

**Mr Gary Wilson:** I'd like to ask you about the phrase

to "be consistent with" the policy statements and municipal planning, because we've had some submissions which suggest that's too onerous, that it should be to "have regard for." I'd like you to say why you support "to be consistent with."

**Ms Cooper:** The key criticism that was made constantly before and during the whole reform effort that is under way is that policy didn't mean anything. There was an enormous amount of debate on the need for stronger language and then there was an enormous amount of debate about what the language should be. A lot of people wanted even stronger language: "conform to."

I think that this, the "shall be consistent with" language, is the compromise that reflects a consensus across the many, many stakeholders that are involved and concerned about this.

**Mr Gary Wilson:** Do you think it's feasible; that is, that provincial policies can be adapted to the local conditions under the "shall be consistent with"?

**Ms Cooper:** Yes. However, they need to be incorporating matters of provincial interest. That's the whole point of this. So yes, with that caveat.

There's something else I thought of. It's gone.

**Mr Gary Wilson:** Okay, maybe it will come back.

**The Chair:** Ms Haeck has a question or two, perhaps.

**Ms Haeck:** I just wanted to quickly thank you also for your remarks, and specifically your recommendations with one of those thorny issues called "minor variances" and the fact that you do make some clear recommendations that I think will go at least some way in addressing that issue.

There are others who have come before this committee and, in dealing with wetlands or other elements of the proposed bill, raised the issue of the word "significantly," which is on page A-15 in your document. It relates to whether something is minor. Again, it sort of is quantifying whether or not a variance is minor or major. You are a lawyer; I'm a librarian—

**Ms Cooper:** I'm not a lawyer.

**Ms Haeck:** Oh. Well, okay.

**Ms Cooper:** It's a matter of some pride, actually.

**Ms Haeck:** Well, I feel the same way, actually, many times in this job. People sort of make assumptions and I say: "No, thank you. I'm thankful not to be."

But the public views the word "significantly" one way and then you get into the legal debate of what words like "significant," "major" or "minor" mean. To your way of thinking, will this deal with the issue to your satisfaction?

**Ms Cooper:** I think it will deal with it in a way that's a lot better than the current situation. I think you'll still have misuse of the provision and therefore you still have to give the public the right of appeal.

**Ms Haeck:** Very good.

**The Chair:** Ms Cooper, we ran out of time. We thank you for your submission and for the preparation that went into the writing of this brief.

**Ms Cooper:** You're welcome, and thank you. Good luck.



DUFFERIN-PEEL ROMAN CATHOLIC  
SEPARATE SCHOOL BOARD

**The Chair:** We invite the Dufferin-Peel Roman Catholic Separate School Board. Welcome to this committee. Again, just as a brief reminder, we know that some of the reports that have been written are very long and that much can be said on anything. But if you would like to members to ask you questions, try to leave approximately 10 to 15 minutes for that, all right?

**Mr Art Steffler:** As representatives of the Dufferin-Peel Roman Catholic Separate School Board, we welcome this opportunity this afternoon to share our concerns with the current Planning Act and Bill 163. By way of introduction, my name's Art Steffler, chairperson of the Dufferin-Peel separate school board. With me are trustee Ken Adamson; Mike Bator, superintendent; Peter Howarth, associate director of corporate services; and Thane Munn, planner.

As a trustee representing students and parents in the Dufferin-Peel separate school board jurisdiction for over 30 years, I have been witness to the incredible growth that this board has encountered since its inception in 1968, from a responsibility at that time of 27 schools and 9,000 children to the current 105 elementary and secondary schools serving over 74,000 students in a geographical area that covers three municipalities within the region of Peel and Dufferin county. This growth in the student population, coupled with the financial constraints of the government, has created a severely overcrowded educational setting. Included in our submission are copies of submissions from our school principals detailing the impact of overcrowding on schools and children.

In our opinion, the Planning Act does not contain the appropriate provisions that would allow school boards to deal with the impact of this type of growth on student population. We are here today to request changes to the act that would address the overcrowding crisis and allow our board to fulfil its mandate.

Trustee Ken Adamson will now address the committee with the specific concerns that this board has with the Planning Act.

**Mr Ken Adamson:** As you may be aware, school boards in the province of Ontario are mandated by the Education Act, which states that every school board shall provide instruction and adequate accommodation during each school year for the pupils who have a right to attend a school under jurisdiction of the school board. It is because of this mandate that we are appearing today.

As mentioned previously, our school board provides educational instruction and accommodation for over 74,000 students in 105 schools. The 105 school buildings provide the school board with 48,180 pupil places. The remaining 25,820 pupil places are accomplished through the placement of 705 portable classrooms placed on school sites. To accommodate these 25,820 temporarily accommodated students in permanent facilities would necessitate the construction of 30 elementary schools and four secondary schools.

Our school board acknowledges that it recently received a provincial allocation for eight capital projects from the province. However, the existing need for

additional school facilities, coupled with the construction of residential development projects already approved within the school board's jurisdiction, continues to put a severe strain on school facilities. Based on projected student yield from residential projects already approved in the area, the school board will require eight additional elementary schools by 1998.

As you can see, our school board is fulfilling its legislative mandate in severely overcrowded facilities, which will continue for some foreseeable future. As Art mentioned, you have a package of information from school principals that indicates the severity of the problem.

We are here today seeking the legislative authority for school boards to become a full and equal partner in the planning process. It is our contention that the lack of authority for school boards under the Planning Act has helped create the severely overcrowded situation that our school board and other school boards operate under.

I would like to speak about our school board's submissions to the Commission on Planning and Development Reform. As we are all aware, we are here today to provide input on Bill 163, which is the next step in the process that the province initiated in 1991 by the appointment of the Commission on Planning and Development Reform.

Throughout the commission process and the preparation and approval of the new provincial policy statements, our school board has made a number of submissions to both the commission and the Ministry of Municipal Affairs detailing our school board's concerns and requesting the necessary changes that would give school boards the appropriate authority when dealing with development applications. Copies of our earlier submissions are attached in our package for your information.

1410

It is interesting to note that in the final report of the commission, titled New Planning for Ontario, it was reported that a number of school boards advised the commission that they are experiencing difficulties in accommodating students and that development should be staged to meet the accommodation needs. The commission recognized that the current Planning Act provisions regarding adequacy of school sites are no longer valid. School sites can be designated or reserved in plans of subdivision, but with no resources to acquire the site and construct a facility, the school boards' needs are not being met.

The commission proposed that municipalities be required to develop policies in the municipal plans addressing the provision of educational facilities rather than just sites. I would point out, however, that despite the recognition by the commission of the overcrowding concerns of school boards, the new policy statements issued by the Ministry of Municipal Affairs did not make provision for ensuring that both school sites and facilities would be available in new development areas. It is our contention that both the policy statements and the legislation should require that the pace of residential developments be phased in conjunction with the availability of school sites and facilities.

This brings us to a residential evaluation policy that I'd like to explain. Before I get into our specific requests regarding changes to the Planning Act, I would like to advise the committee of the actions that this school board has taken in order to gain some control of the student growth within our jurisdiction.

Earlier this year our school board implemented what is known as the residential evaluation policy. The intent of the policy is to evaluate residential development applications in light of the availability of adequate school accommodations. The policy set out criteria to determine whether adequate school accommodation is available, and if a particular application did not meet the criteria, the school board would request the local approval authority to phase the development or not approve it. The policy would not stop development, but rather would put in place some control to allow for our school board to meet the student accommodation needs. It was hoped that through the implementation of the policy, the local official plans would be revised to include policies requiring phasing of development related to school accommodation, much the same as official plans contain policies related to the phasing of development because of other community requirements such as transportation and servicing facilities.

It is the contention of the school board that the Planning Act provided the board with the authority to implement this policy based on section 2 of the Planning Act, which states that:

"The minister, in carrying out his responsibilities under this act, will have regard to, among other matters, matters of provincial interest such as,

"(e) the equitable distribution of educational...and other social facilities."

While there is some empathy on the part of the development industry and the municipal governments to the school overcrowding faced by our students, the policy has met with strong opposition. One of the first actions of the school board in implementing the policy was to request the region of Peel to refer four draft plans of subdivision to the Ontario Municipal Board in order to achieve phasing conditions. It was the legal opinion of the regional solicitor that the school board has no authority under the Planning Act to request a referral based on the lack of school accommodation. The commissioner of planning subsequently declared our referral request frivolous and vexatious, and the draft plans were draft-approved by the commissioner of planning for the region. In order to protect its rights, the school board initiated through the courts a judicial review of the actions of the commissioner of planning.

In continuing to pursue its policy, the school board subsequently referred three zoning bylaws to the OMB. As is their right, the applicants of the three zoning bylaws applied to the OMB for a motion to dismiss the school board referral requests and have the applications approved without a full hearing. The school board was extremely disappointed that the OMB granted the motion and dismissed the school board's referral requests without a full hearing.

In its decision, the OMB ruled that section 2 of the act

had been complied with because the official plan provides for school sites, and clause 51(4)(j) of the Planning Act has been complied with because school sites are made available through the processing of the required draft plans of subdivision. Therefore the board ruled that the school board has no authority to request phasing of residential development because the actual school facility does not exist at the time of residential development. There is a copy of the OMB ruling included in your package.

The OMB contends that the primary problem for the school boards is the shortage and delay and lack of funding for school construction, and this is not specifically included in the provisions of the Planning Act. The school board agrees with this finding, but has difficulty understanding that under subsection 34(5) and clause 51(4)(i) of the Planning Act, a municipality can prohibit or phase residential developments because of adequacy of utilities and municipal services, which are also subject to the timing of provincial subsidies and grants. School boards, however, are unable to phase residential developments when the same funding problems occur for school construction.

As the committee can see, school boards are hindered by the fact that the Planning Act does not recognize that school facilities are an integral component of the community structure and as such should be provided for as part of the planning process.

Let us now refer to the Planning Act changes. The following are the specific amendments to the Planning Act that our school board is requesting:

While section 2 sets out matters to have regard to when making decisions under the proposed Planning Act, the implementing clauses have not been included.

Under the current planning process as prescribed in the act, school boards provide comments on official plan amendments, zoning bylaws, minor variances, severance and subdivision applications and make their requirements known to developers, regional and municipal planners and councils. School boards under the act may be consulted, but they are not specifically referenced as an entity that must be consulted.

School boards should be involved at the beginning of the development process. Ideally, the school boards should be consulted by the developer and the municipality during preliminary discussions prior to the submission of a formal residential development application to the municipality and to the region. Notification would ensure that the school boards have the opportunity to plan cooperatively with the region and the area municipalities.

Therefore, we would request that subsections 17(14) and (20), 34(15), 45(8), 45.1(3) and 51(14) and (16) of the Planning Act be amended to include school boards as an entity which the minister shall consult with and whose policies the ministry shall have regard for.

As detailed previously, the minister's delegate, the commissioner of planning, and the Ontario Municipal Board have interpreted the Planning Act to read that it does not provide school boards with any powers to control development or residential intensification.



We would request that subsection 34(5) of the act be amended to include "lack of school facilities" as a reason for which a municipality may prohibit or delay a residential development. Further, we would request that clause 50(4)(j) of the act be amended to read "the adequacy of school sites and school facilities."

It is our opinion that should the province adapt these changes to the Planning Act, the school boards' job of fulfilling its mandated responsibilities will become more manageable.

Thank you again for this opportunity to make a submission. We are available to answer any questions that you may have.

1420

**The Chair:** Thank you. Mr McLean, three minutes and a half, please.

**Mr McLean:** Welcome to the committee and thank you for your presentation. I've said for a long time that the school boards should all be part of the planning process and when you plan a subdivision that should be part of it. To date, you've had no input on anything that's gone on in Dufferin-Peel with regard to planning. Simcoe county board I know does do some surveys, which I guess you have done now, to determine what your increased growth is going to be. But there's nothing there and what you're asking for is proper.

You're the first one I've seen that has mentioned such a thing as transportation. That, to me, is a major issue also with regard to development, and when I look at what's happening in the town of Markham and along Highway 2 and along Highway 7, it just makes me shudder to think of the major development that's taking place without any major transportation links being put in there.

So while I agree with what you've presented here today, it will be interesting to see what the ministry's reaction is in regard to your request, and I thank you for attending here.

**Mr Adamson:** Thank you, Mr McLean.

**Ms Harrington:** Thank you very much as a group for coming before us. I think what you've pointed out makes a whole lot of sense. It is a real problem, especially, I gather, in your area.

I think most of us believed that in the process of making an official plan, a municipality would think about very many needs of the future of that community, whether it is the commercial development or industrial development, the economic base of the community and then the social requirements of that community, whether it's recreation, schooling, health care, libraries, transportation, and have a vision for what we want that community to be. I would have thought that schooling would be a very important part. I know at least in my community of the city of Niagara Falls, when the northwest area of the city was developed, both school boards owned adjacent pieces of property, and that was part of the official plan. Mind you, it did take several years before that school was built. The residential area was built first.

So I understand what you're saying, but I do think the vision is to have that as part of the making of an official

plan and have the whole community involved in that. Either you can comment on that or maybe the ministry would like to comment on this particular problem. Would they be interested in doing that at this time?

**The Chair:** Mr McKinstry?

**Mr McKinstry:** Thank you, Mr Chair. Yes, certainly in the view in planning reform we would see that schools are very much a part of the equation in developing official plans, as well as in the approval and the circulation, for that matter, of subdivisions. It seems to me that in the past municipalities and the ministry have circulated subdivisions to the school board, even though there is no absolute requirement, but that that is part of the normal review of a subdivision, and we agree that planning for schools is a critical part of the planning process.

**Ms Harrington:** How do we ensure that, though, that these needs will be taken into account?

**Mr McKinstry:** I guess, if I can digress a little bit, one of the issues that's come up in the planning process is that the planning process has been slowed down by a lot of circulation to agencies and ministries that may not or may need to see it. So we have avoided putting in the legislation requirements that say municipalities must circulate, because it's our contention that in fact municipalities are responsible and will take into account things like schools and will therefore circulate to school boards where there are significant development applications.

**The Chair:** Mr Eddy, would you like further clarification?

**Mr Eddy:** Just a clarification. It's not schools we're talking about. There's a difference between school sites and school buildings. The sites are provided for at times, but it's the buildings that are the big problem, providing the buildings for the kids to go to.

**Mr Adamson:** Well, both are important. But if I could comment with respect to the present Planning Act, as we mentioned in our brief here, the present Planning Act does mention infrastructures in that section that I referred to. However, it's not enshrined, and the fact that the OMB ruled against us in our residential evaluation policy does not give credibility to the existing act in that area and has resulted in the situation where we have over 30% of our students housed in portables. The present act, with its reference to an infrastructure, does not accommodate what we require. We want it enshrined. We're requesting that it be enshrined and that we become an entity in the planning process.

**The Chair:** Mr McKinstry?

**Ms Harrington:** I think you make your point very clearly.

**Mr McKinstry:** If I could just give one more clarification, in fact you did mention in your brief section 2 of the Planning Act, and in fact in section 2 in Bill 163 it says that the minister and the municipalities will have regard to "the adequate provision and efficient use of communication"—oh sorry, I'm on the wrong one, it's (i), "the adequate provision and distribution of educational, health, social, cultural and recreational facilities," and we did include in that "facilities." I think you mentioned that in your brief.

**The Chair:** Thanks very much. Mr Curling.

**Mr Curling:** Thank you very much. I think that is an excellent presentation. We've heard before about the school board playing a more integral part in formulating an official plan, and I think the example you use of the Ontario Municipal Board, the ruling, is something the ministry should study very much, because you're being hit on both sides. You're not talking about identifying sites, but the arbitrary way the government came about intensification also has an impact on the schools themselves, and that's why the growth of portables is there.

The problem we have too is with the policy. John Sewell had asked if the policy of this planning could be reviewed every five years, because communities do change, and I think the Ontario Municipal Board ruling was on the basis of that, that if they were reviewing the policy every five years, just like the plan, maybe you can also have some sort of input there.

I just want to ask you to reflect on whether the government should have the policy being reviewed every five years so that if there are changes like intensification the arbitrary way, a school board could have some input into those kinds of strategy. Would you like to see that?

**Mr Adamson:** Yes, certainly. Our school board has been a consolidated school board now for 25 years. The problems that we've had with portables have been around for 25 years, and if we review it just every five years, I think it will just continue, the situation that we're in now just continuing. In the figures that I did mention of the number of schools we require, it's predicated on the fact that 30% of our students are still in portables. So I'm not quite sure the—

**Mr Curling:** What I was saying is that the community had changed. As a matter of fact, the growth has gone to an extensive manner where you have to put people in portables. The way this Planning Act is going about, you cannot change the policy, and if they have been changing the policy, you'd have a chance yourself to say, "Let's have another look at what is happening in our community in regard to the policy and also the legislation." But in this government it says you cannot change the policy. You cannot review the policy every five years, but you can review the plan.

**Mr Hayes:** Not at all.

**Mr Curling:** But that's—

**Mr Steffler:** If I could elaborate on the seriousness of where we are because of the existing Planning Act, while Ken has said that we are over 30%, that's the average of the whole area. There are some areas which are 160% over, and these are these review areas that we have thought about. So the urgency is there to do something now, and to review it every five years, certainly I can't see anybody having a problem with that, but to get it in place where we have some say to understand what is happening.

**The Chair:** Mr Curling, we've run out of time. We want to thank the Dufferin-Peel Roman Catholic Separate School Board for taking the time to come and for sharing some of your suggestions with this committee.

**Mr Adamson:** Thanks for the opportunity.

1430

#### ASSOCIATION OF MUNICIPALITIES OF ONTARIO

**The Chair:** We invite the Association of the Municipalities of Ontario. We welcome you and we'd like to ask one of you to introduce everybody at the table or not sitting at the table but present.

**Mr Bill Mickle:** Thank you very much, Mr Chair. Committee members, good afternoon. I am Bill Mickle, reeve of the town of Exeter, president of AMO, the Association of Municipalities of Ontario.

As background just briefly to the members here, AMO, the Association of Municipalities of Ontario, is a non-profit organization with membership of approximately 700 of Ontario's 817 municipal governments, representing over 95% of the province's population. The mandate of the organization is to promote, support and enhance strong and effective municipal government in Ontario.

I would like to begin by thanking the committee members for allowing AMO the extended time period to present its briefs today in response to Bill 163. Given the diversity and the impact of the bill on the municipal sector, the association has developed two responses, which will be addressed separately today. A delegation from AMO's planning task force will first present the association's response to the proposed Planning Act amendments. A second delegation, from AMO's local government disclosure-of-interest task force, will then present the association's response to the Local Government Disclosure of Interest Act and to the Municipal Act amendments as they relate to open meetings and the disposal of real properties.

Mr Chair, with these two presentations, I would suggest that the presentations be equally split at 45 minutes each, and I would ask that you accommodate this request.

**The Chair:** Can I ask you, would you prefer questions to be asked at the end of both presentations, therefore, or will you be reading for 45 minutes approximately or talking to the issue for 45 minutes?

**Mr Mickle:** There are two distinct, different presentations, so they'll each be handled in a normal way of presentation and questions.

**The Chair:** Very well.

**Mr Mickle:** Fine. Thank you.

I would like to introduce the AMO representatives who will be presenting our brief concerning the Planning Act amendments. Councillor Terry Mundell, from the county of Wellington, is AMO's first vice-president and has chaired the association's planning task force for the past three years. With him, we have the co-chair of that task force, Peter Atcheson, who is the planning director for the city of Brantford. Also present today is Rash Mohammed, the commissioner of planning for the region of Halton. Rash is also a member of AMO's board of directors and past chair of the regional planning commissioners.

Terry will be presenting our brief, outlining some fundamental amendments that the association believes are necessary if the reforms contained in Bill 163 are going to work and actually deliver the improvements to Ont-



ario's planning system that municipalities and many other interests have been seeking and advocating.

But first I want to take a moment to point out the connection between this part of our presentation and the principles for provincial-municipal reform contained in AMO's major policy paper, *Ontario Charter: A Proposed Bill of Rights for Local Government*.

The Ontario charter is based on principles which echo one of the principles of planning reform, that is, municipal empowerment. For municipalities, this is a principle which stands for local autonomy, greater municipal decision-making authority, permissive provincial legislation and a clear division of provincial-municipal responsibilities. We believe that planning reform is an opportunity for demonstrating how these principles can be implemented.

It is important to note that next to the Municipal Act, the second most significant piece of legislation affecting municipal operations is the Planning Act. Therefore, we believe it is crucial that the province's planning reform, through the stated commitment to empower municipalities, becomes a model for demonstrating how a new relationship between the province and municipalities can be forged.

It is within the general theme of the principle of greater municipal decision-making authority that AMO has prepared its response to Bill 163. During initial discussions with the Minister of Municipal Affairs on the Ontario Charter, the minister stated that Bill 163 adheres to, and implements, this principle. The association does not agree and has identified key amendments which, if adopted, would more closely bring planning legislation in line with both the Ontario Charter and the principles advocated by the government of Ontario.

**Mr Terry Mundell:** AMO initially welcomed the introduction of the government's planning reform package, because the association and its members believed that improvements to Ontario's planning system are badly needed and it is in everyone's interests that the process move forward. However, the association believes that Bill 163 contains some fundamental flaws and will not lead to the improvements to Ontario's planning system that municipalities and many other interests have been seeking. AMO's assessment is that while the legislative amendments contained in Bill 163 are a step in the right direction, they fall significantly short of fulfilling the principles for reform, that is, greater municipal empowerment and a streamlined planning process with the integration of social, economic and environmental policies.

AMO has worked diligently on planning reform for the past three years, and we've articulated major concerns at each stage of the process. It is therefore with great disappointment that we continue to have some major concerns at this late stage in the process, when the government is ready to entrench changes in legislation. We believe this is a non-partisan process. We believe it is a process which deals with municipal roles and provincial roles. We believe it deals with provincial planning in that atmosphere. We believe the bureaucracy has developed this particular document, but it is now time to talk, politician to politician, about accountability—

accountability to the electorate, accountability to our ratepayers—those decisions which are made by us, the politicians.

This particular presentation therefore focuses on major amendments to Bill 163 which the association insists are necessary if the reform package is going to work and receive the support of Ontario municipalities. What we'd like to do, first of all, is assess the principles.

At the beginning of the Sewell commission's work, the association established principles and objectives to guide planning reform. These particular principles and objectives largely mirror those promoted by the province.

Province's principle of increased municipal control leading to greater accountability and openness: AMO supported greater accountability, increased municipal decision-making authority and a limit on provincial and judicial review of municipal decisions. As noted previously, the Ontario Charter principles also support this.

Province's principle to cut red tape to make the planning process faster and more efficient: Again, our association called for timely decision-making and integration of planning and environmental assessment processes.

Province's principle of environmental protection through clear policy statements that integrate social, cultural, economic and environmental values: AMO supported the adoption of a comprehensive set of policy statements which set out economic, environmental and social goals and objectives within which municipalities would define specific implementation policies for balancing these often conflicting goals.

It's AMO's position that the package of planning reforms has several flaws that work against achieving each of the principles. The main failings are summarized.

Increased municipal control leading to greater accountability and openness: Our evaluation is that the province has strengthened its policy direction and control over land use decision-making, yet only minimally reduced its own powers in the legislation. Putting it in another way, while municipalities are given the authority to make most development decisions, this is constrained by more restrictive policies and legislation which give the province extraordinary powers to prescribe decision-making at the local level. The reasons for this evaluation and key recommendations for amendments to Bill 163 follow and are in appendix A, which contains the summary of those recommendations.

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The policy statements continue to be too directive and prescriptive, focusing on means, not ends. Coupled with the change to the more rigid enabling clause "shall be consistent with," municipalities will have limited decision-making authority on the form and nature of development in their communities. It is generally agreed, by the province and other interests, that "be consistent with" is a stronger and more rigid enabling clause. There is less agreement, though, on what it actually means and, therefore, until such time that case law can provide some understanding of this new terminology, there will be significant questioning and challenging of its application.

Furthermore, it is agreed, and the government has

stated in its paper *A New Approach to Land Use Planning*, that there are bound to be situations where two or more of the statements apply to a local area, and where it may not be possible to be consistent with all applicable policies. The "have regard to" status readily acknowledges the need to balance sometimes conflicting policies whereas the "be consistent with" clause implies that planning decisions must conform with each of the policies.

The association believes the term has been applied effectively and that there is no need to tamper with the clause. In fact, AMO and other groups have argued that the province's failure to produce a clear, comprehensive and balanced set of policies has been one of the most significant barriers to the effective use of this policy tool.

A second concern with this section of Bill 163 is that it changes the list of public bodies to which this section of the act applies. The existing act states that every municipality, every local board, every ministry, board, commission or agency of the government, including the municipal board and Ontario Hydro, "shall have regard to." Bill 163 excludes application of this section to provincial agencies and commissions, Ontario Hydro, and ministries other than the Ministry of Municipal Affairs.

This is contrary to the Sewell commission's recommendations and the association's position. The association agrees with many other submissions put forward to the committee that all arms of the province should have to play by the same rules. Therefore, AMO strongly believes that this section of the act should not be changed and that subsection 6(2) of Bill 163 should be deleted, which is our recommendation 4.

Furthermore, uncertainty remains about the status of other provincial guidelines and directives on land use planning, giving the province further opportunities to prescribe local decisions. The act should specify that these shall be of an advisory status only. In speaking to a member from the Ministry of Environment and Energy, a bureaucrat, I asked him a question on what exactly "advisory status" means and he told me. The advisory status of his particular guidelines means that he advises us to follow the guidelines or he advises his staff to take us to the Ontario Municipal Board.

Bill 163 amends section 2 of the Planning Act, matters of provincial interest, by applying this section inappropriately to municipalities and not to other ministries and agencies of the crown.

First, municipal decision-making should be governed by policy statements and, as such, this section should not apply to municipalities, as is currently the case in this section of the Planning Act.

Second, as recommended by the Sewell commission, section 2 of the act should apply to all ministries and agencies of the crown and, as such, provide consistency and guidance across all parts of the government on the exercise of provincial responsibilities under the act, our recommendation 2.

The Ministry of Municipal Affairs has stated in its background document on planning reform that the new policy-led planning process will "still ensure a level of

flexibility that will allow for local considerations and objectives." However, nowhere in the act is this recognized. For example, the new purpose of the Planning Act section recognizes the province's lead role in policy but does not acknowledge the municipal role. It ignores that the Planning Act also provides for a land use planning system within which municipalities have the authority and responsibility to make decisions on the application of provincial policies to their local areas.

This section should be amended to state that the act should provide for a "land use policy system led by provincial policy which respects the decision-making authority and accountability of municipal councils and the economic interests of the participants." Furthermore, the act should also be amended to include a section which states that policies are to be interpreted with reasonable flexibility in local application.

The act gives the minister the extraordinary provincial power to require regard to any other matters prescribed. This amounts to enabling the province to regulate municipalities in land use planning on any matter, thereby circumventing the legislative and public consultation process and perpetuating the uncertainty at the local level regarding provincial intentions to intervene in new policy areas.

The province should only be able to regulate or prescribe on those matters for which it is given explicit authority under the act. In this way, municipalities and other interests can be fully consulted on the policy question as to whether the province should have this authority in the first place. Our recommendation 2 deletes these provisions.

Bill 163 does not repeal the crown's extraordinary power to declare a provincial interest immediately prior to an OMB hearing or to confirm, vary or rescind decisions of the OMB on matters of a declared provincial interest. The result is that a declaration of provincial interest can be made very late in the decision-making process, at the stage of an appeal to the Ontario Municipal Board. The removal of this power was recommended by the Sewell commission and continues to be supported by AMO, our recommendation 3.

The act does not acknowledge that an approved official plan and subsequent planning decisions which conform to the approved official plan should be deemed to have regard to provincial policies, such as is the practice in other provinces. AMO's recommendation 7 calls for explicit recognition of this in the act.

The act provides for the establishment of new municipal joint planning authorities without giving first priority to utilizing and supporting existing county planning structures. Bill 163 does not differentiate between municipalities and areas where there already exists a county planning structure and/or official plan versus those where neither of these conditions applies.

Bill 163 therefore permits the creation of a municipal planning authority in counties that may have established county planning operations, or that may be prescribed by regulation to adopt an official plan. Not only could this lead to a duplication of services in areas where county planning structures currently exist, it could undermine



existing county planning operations or create conflicts within counties. Ultimately, priority should be given to first utilizing existing county structures for joint planning, prior to the creation of new structures.

The mechanism for ensuring this should be a requirement that local municipalities situated within counties with official plans or those prescribed to adopt one must obtain the consent of their county councils as a precondition for the establishment of municipal planning authorities. AMO also believes that county finance issues in general and the specific reference to exempt a local municipality that is part of a municipal planning authority from paying the county levy for land use planning purposes should not be legislated in the Planning Act. Existing county official plans have evolved in those counties which first established planning departments through the use of the county levy. This provision will discourage the formation of planning departments in counties and will prevent new county official plans from evolving. Recommendations 12 and 13 deal with these issues.

The delegation of the authority to approve local municipal official plans and plans of subdivision is only given to regional municipalities, and not to counties with approved official plans or those prescribed to prepare one. As such, Bill 163 has created an imbalance between counties and regions. The association maintains that the bill should extend the same privileges the regions enjoy regarding the approval of official plans and plans of subdivision of local municipalities to counties that have approved official plans.

The act includes the province's intent to prescribe the mandatory contents of official plans, which would include detailed requirements of things that must be included in the official plan, which would thereby also prescribe the distribution of planning responsibility between the two tiers of local government. This not only adds another set of specific requirements for a municipality, but represents a blatant distrust of municipal governments and the ability of the professionals who work for them to write the table of contents of their own official plan. Recommendation 15 deletes this provision.

We want to talk about cutting red tape to make the planning process faster and more efficient. Greater municipal decision-making authority is recognized as a significant measure not only for achieving local empowerment but for also streamlining the process and ensuring more timely decisions. In addition to the above, the association recommends the following amendments to Bill 163 to ensure that this principle is achieved.

The measures to streamline and integrate environmental assessment and planning process for municipal infrastructure are insufficient, since the Planning Act does not state that the completion of the optional process will mean that the approved plan will be deemed to have met the requirements of subsequent processes under the Environmental Assessment Act. Recommendation 16 amends the Planning Act to ensure that the approval of an official plan or amendment which has followed the prescribed process means that the steps under the Environmental Assessment Act will not have to be repeated.

A significant initiative which would help streamline the process which Bill 163 does not address is the council authority to delegate the approval of official plans and plans of subdivision and consents to a committee of council or municipal official. Recommendation 17 amends the act to provide for this delegation.

#### 1450

Bill 163 includes an amendment which will require that councils wait 30 days after a public meeting before adopting an official plan. This requirement is arbitrary and presumes that councils will not be able to judge, based on the input received at the public meeting, whether further time and deliberation is required on a matter. We therefore recommend deletion of this amendment, recommendation 26.

The province will prescribe requirements for public meetings, for plans of subdivision, even though during the official plan or official plan amendment stages, public meetings are already required and in many cases deal with the matters of public interest which arise at the stage of subdivision approval. Recommendation 20 deletes this provision.

Appeals of a change in condition of a plan of subdivision can be made by any person or public body, instead of just those requesting and affected by the changed condition. Recommendation 21 confines notice to only those parties affected by the changed condition.

Automatic appeals are part of the act in that all objections of plans of subdivisions and consents go straight to the OMB and do not have to go through a request for referral to the approval authority first for a test of validity. AMO recommendation 23 calls for objections to first be referred to the approval authority.

The act includes a provision allowing municipalities to use alternative dispute resolution techniques, but no recognition or support of this alternative process is provided for in the legislation. Recommendation 24 calls for the recognition in the act that non-participation in alternative dispute resolution can be deemed a reason for refusing a referral request.

Furthermore, objections to municipal official plans and amendments, plans of subdivision and consents are filed at the end of an approval authority's decision-making process, as opposed to at the front end. Consequently, objectors can wait a considerable period of time before filing a request for referral and there is no support for the use of alternative dispute resolution processes to resolve objections before a request for referral to the OMB is filed. Recommendation 26 amends the process for official plans and amendments such that once an approval authority has received an application, it should immediately notify all parties and require that objections be filed within 30 days. This would allow councils to resolve disputes and make recommendations for changes, instead of just waiting for the 150 to 180 days to elapse while the approval authority is making a decision.

Bill 163 once again gives provincial ministries special status by allowing that public bodies, unlike persons, are not required to file objections to official plans prior to or during municipal public hearings. This perpetuates the

existing situation, which involves interventions very late in the decision-making process. This special treatment for public bodies is absolutely unfair and once again allows provincial ministries to intervene late in the process without having to provide early input. Recommendation 25 deletes this provision.

Environmental protection through integration of social, cultural, economic and environmental policies: The policy statements and legislation will to a great degree meet the principle of environmental protection. However, the principle addresses the integration of social, cultural economic and environmental values. AMO believes that Bill 163 does not adequately deal with the issue of integration and the balancing of the numerous policy interests and land use planning. The following changes are therefore recommended:

As recommended previously, the association does not support changing the enabling clause to "be consistent with." AMO believes that "have regard to" recognizes the necessity of balancing a number of policies and considerations in making a decision, whereas "be consistent with" implies conformity with each policy without recognition of possible conflicts.

There is no commitment to review provincial policies on a periodic basis, whereas municipalities are required to review their official plans every five years. This is yet another key recommendation made by the Sewell commission which the government has excluded from Bill 163. The Planning Act should be amended to require that the Minister of Municipal Affairs give consideration every five years to whether there is a need to review and revise provincial policy statements, recommendation 6.

All ministries of the crown can request referral of or appeal municipal plans, as opposed to just the Ministry of Municipal Affairs, and therefore there will not be one provincial interest, voice or position on local planning matters. Municipalities will have to continue to deal with individual ministries who often do not agree with each other.

Recommendation 8 amends the act so that only the Minister of Municipal Affairs may file an appeal on behalf of the crown.

In conclusion, the association supports the principles for planning reform, but has argued in this presentation that unless substantive amendments are made to Bill 163, the planning reform package will not work and will not provide the improvements to Ontario's planning system that municipalities and many other interests have been seeking. The association therefore insists that its recommendations for major amendments to Bill 163 are necessary if the principles for reform are to be achieved.

During the past several weeks the committee has received numerous deputations and presentations on Bill 163. We have also been reviewing this input and can confidently say that a number of our concerns and recommendations have been echoed and supported in many of these submissions. There's a lot of support for changes to Bill 163 and we urge you to give those serious consideration.

We also believe that our recommendations improve the

necessary balance that policies and legislation must achieve between the various interests in land use planning: municipalities, provincial government, the development industry, environmentalists and the citizens of this province. Achieving this balance is crucial since environmental protection, economic growth and community economic development are inextricably linked to planning policy and legislation. Therefore, it is imperative that planning reforms be balanced and work towards achieving the principles agreed to during these three years of discussion and debate.

Thank you very much for your time.

**The Chair:** Thank you. There are approximately six minutes per caucus on this matter. Government members?

**Ms Haeck:** In the absence of other members—you go first, then.

**The Chair:** If you like, Mr Eddy.

**Mr Eddy:** Thank you for your presentation and the hours and hours of work in presenting it. It's unfortunate that you found so many details, and I feel that I've been misled somewhat because I understood that AMO was on side with the new act—I think we were told that on several occasions—and here I find that you're supporting the principles but many of the things you disagree with. I see you're insisting—I noted that word "insisting"—on some changes, so thank you for presenting them so forcefully.

We've had a presenter say that what we need to do now—we have the bill, we've heard a lot of presentations on it and a lot of requests and demands for changes—is take some more time, that this doesn't need to be passed before the end of 1994, and what we should do is look at the whole planning program that's being pronounced here: the policies, which are not under review and there is conflict between them, the legislation, the regulations—which we don't have access to; maybe you've seen some of them—the proposed amendments by the government that will be coming forward, and the implementation guidelines and the whole package. That would take some time. Would you like the opportunity to do that, or is that too big a job?

**Mr Mundell:** Thank you for the question, Mr Eddy. I think it's very important, and one of the things that we've said as an association from day one is that it's very hard to understand what the effects of this particular planning reform will have on the province of Ontario without the ability to see the whole package. We spoke forcefully early in the process that we wanted to see the policy, we wanted to see the legislation, we wanted to see the regulations, the implementation guidelines, all as a package so that we could totally understand how this would have effect on municipal government in the planning process today. We're very, very supportive of that. We believe we need some time to review this package as a whole instead of piecemeal.

**Mr Eddy:** We're feeling much more that way too, I'll tell you, as time goes by. Mr Grandmaître.

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**Mr Grandmaître:** I think your presentation would have been very much shorter if you would have told us



what you like about this bill. We could have taken 10 minutes. There isn't much that you do like or appreciate with this bill.

Were you disappointed that—I think Mr Sewell did do a good job in consulting people right across the province and I thought that Mr Sewell had done a good job with AMO. Are you disappointed that this bill doesn't really reflect the understanding that you had with Mr Sewell?

**Mr Mundell:** There's no doubt there's disappointment in that venue. Mr Sewell and his commission went through a very open and public process throughout the province of Ontario and probably one of the best public consultation processes any government has ever been involved in, and the commission I think did a good job in that. What has happened, though, since that process is that it has not been very public and very open, the forum to discuss these issues. Mr Sewell's work was not reflected in Bill 163 totally, and we feel that his work through the public process has indeed changed. So, yes, we have some disappointment in that.

**Mr Grandmaître:** Would you like to see the regulations before this bill is given final approval?

**Mr Mundell:** Absolutely.

**Mr Curling:** We have some concern here too in respect of—and I think you highlighted that, that the entire legislation, and regulations and the hundreds of amendments that may come in afterwards, are based on this policy, but again the premise immediately is that the policy is not under discussion, not under review. That's one part.

The other part, as I asked quite a few of the presenters here, is that, like the official plan, every five years it should be reviewed because of just the dynamics of how cities grow or change. What is your feeling about reviewing that policy every five years so that we can reflect the growing and the diversity of cities?

**Mr Mundell:** Our association's position is very supportive of that. We firmly believe, as did the Sewell commission, that policies should be reviewed every five years. I think the reason for that is that we can continue to have a Planning Act which meets the needs and changes of the province of Ontario and how we deal with global markets. I think it's extremely important from an economic basis that the Planning Act is able to reflect the circumstances of the day, and a five-year review is very important to that and we're very supportive of that.

**Mr McLean:** That's the issue I wanted to follow up on, had my questions on: with regard to the five-year review. You know and I know, as municipal councillors, what you spend on planning and consultants and planners. I'm wondering if five years is long enough. Five years goes pretty quickly. Are we going to review the Planning Act every pretty near term of office of a council? Would 10 years maybe not be a more suitable time? You could do it in less, but it would have to be reviewed in 10, or it could be reviewed in less if you've seen the need to happen. But to say that it's got to be reviewed every five—I'm wondering if maybe we're being pretty tight on that schedule.

**Mr Mundell:** I think the difference in what we speak

of, we don't believe the Planning Act needs reviews every five years. Believe me, I don't need to go through another three years like the last three. I think what we believe is that the policy statements need to be reviewed every five years to see whether or not those particular policy statements are standing the test of time. So there is a separation between the two issues, as we see it.

**Mr McLean:** Broad policy statements can mean anything. They can be reviewed till the cows come home, but it doesn't really matter. It's all right to review them but if you're not going to change them, then nothing's going to happen.

I want to ask you a question with regard to delegating authority to staff. I know there's a problem on a lot of the delegations we've had and the wardens of the counties with regard to the counties not having the approval process in place which we think they should have. To delegate authority to staff on official plan amendments or on minor variances that are not being challenged, do you think that that's the right thing to do?

**Mr Mundell:** The delegation of authority to staff is really a recommendation which we have which actually represents some situations which happen in the province of Ontario right now and work quite well in those particular areas. Ottawa-Carleton happens to be the one that comes to mind where that authority is delegated and it works quite well. It's permissive authority. It's not something which must be done; it's something which may be done. So we believe that that's an appropriate action.

**Mr McLean:** We've had some delegations that have suggested that perhaps there should be an OMB deadline. Once they've wanted to proceed with a hearing, there should be a process whereby there is a deadline when that process should end. Do you think there should be a deadline? It's a tough one whether we should, but there have been some who have made that recommendation, and I'm wondering what your association thinks of that.

**Mr Peter Atcheson:** If I understand the question correctly, you're suggesting that the board be given a deadline when it must hold a hearing?

**Mr McLean:** Yes.

**Mr Atcheson:** We would certainly concur with that. I can give you an example in my municipality where one objector held up a plan of subdivision. It had an official plan amendment that had been approved; the draft plans of condition of the subdivision had been approved. We changed one zone from a park to a single-family residence and we were 18 months before we were able to get a hearing in front of the board.

**Mr Eddy:** And what about the decision? How long for the decision?

**Mr Atcheson:** The decision was rendered in about 40 days, I believe.

**Mr McLean:** I've got three minutes left, so I'll just do a couple of short questions here. The other question I have is with regard to the minor variances. A lot of people have said that we still want the OMB to have that final appeal there. They indicate to us that 6% of the OMB hearings are on the minor variance process, and

very strongly a lot of people, the majority by far, think that we should maintain that process of the OMB referral for minor variances.

**Mr Atcheson:** The position of AMO has been that this matter should sit with local municipalities. If local councils can pass the bylaws in the first instance, they certainly should be able to vary them or amend them without the requirement of the Ontario Municipal Board being called in. Councils in many other areas have far higher responsibilities that are not subject to any appeal or review at all.

**Mr Bill Murdoch (Grey-Owen Sound):** Just a short question, and I appreciate your brief and thank you very much for bringing it to us, but I'm like Mr Eddy. I'm very surprised that you have so many problems with it because many a time the minister stood in the House even and told us that AMO's right on side and agrees with everything we're doing and that we should not be telling him that AMO doesn't support us. I know this government's always talking about the cooperation and the partnership it has with its municipalities. Can you explain maybe what would happen to the partnership if this bill's rammed through like so many other bills that they have?

**Mr Mundell:** I think maybe if I can initially clarify, the association's position has been from day one that we do support planning reform. In no way, mean, shape or form should that be construed as this association supporting Bill 163, and there is a substantive—

**Mr Murdoch:** I guess maybe the minister misunderstood that. I can understand that.

**Mr Mundell:** As far as the relationship between the province and the municipal sector is concerned, in terms of Bill 163 moving ahead, obviously it is one which we have grave concern on. Bill 163, to our liking, is a step by the province to move into municipal decisions. It really is. We think that the present act in Bill 163, there's not a lot of substantive change in terms of municipal empowerment. We firmly believe that it's a government intrusion into municipal decision-making and if we are being elected and we are being accountable for those decisions, then let us make them and let our ratepayers tell us every three years at election time whether they like it or not.

**Ms Haeck:** I wanted to ask you a couple of questions. On page 3, section 2.1.1, you talk about the whole issue of "shall be consistent with" and you obviously feel that is far too strong. Obviously, there are other folks who have presented to us who would like it to be "to conform with," as opposed to what we are suggesting, so that they would wish it even stronger. Their concern relates to, as well, page 8, section 2.2.4. This is your recommendation 20, which relates to public meetings and you say again there's a prescription of requirements for public meetings.

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There is a sense among my constituents, and I can show you newspaper articles from the last few weeks, where they are extremely concerned about where local councils, to their minds, have ignored them entirely and have ignored environmental issues, have ignored heritage

issues, and as a result, they feel that the stronger the policy statements are, the better, and that the public should be as involved as it possibly can be. I have to say that I support them in that, and your remarks would be appreciated.

**Mr Mundell:** Yes, thank you for the question. I guess we want to talk first of all about the clause "be consistent with," which is a stronger and more rigid enabling clause. What it does in our minds is tend to affect the interpretive ability of a local council to make a local decision understanding the local situations.

This great province of ours is not the same from one end to the other, and we all realize that, and we believe that we as a municipal council need the ability to try and adapt and interpret local situations that we can then put the proper plans and policies in place so that our municipality can survive and so that our people are best represented. We believe there has to be that interpretive ability, and we don't believe the new clause allows us to do that.

**Ms Haeck:** Just a quick interruption here: You don't believe that the general nature of—and they are relatively general—the policy statements that have been put forward allow you the flexibility to recognize your local situation? Because there are definitely those citizen ratepayer groups, environmental groups who have been before this committee who feel that they should be much more prescriptive than they currently are.

**Mr Mundell:** Our feeling is that the policy statements are just the opposite. We feel they're too prescriptive. We feel they're too directive. We feel they don't allow us any opportunity whatsoever to move to interpret local situations. We have other groups on side with that. The home builders' industry are on side with us on that same particular issue.

**Ms Haeck:** I disagreed with him too.

**Mr Mundell:** Some of the economic development issues which we talk about across the province—we believe that the policy statements will not lead to better and faster decisions. We just don't believe that.

To your comment about public involvement, and I want to clarify that this association is not by any means against public involvement in this process: This association believes that the involvement should come at the front end of the process for everybody. There's no problem whatsoever with the public getting involved. We prefer that, and we prefer that to help us make decisions which represent our ratepayers and our municipalities. So I want to make that very clear.

Under the issue of plans of subdivision and the extra public meetings: We believe that it's a front-end process that your official plan, your official plan amendments and your zoning bylaw amendments all require public processes to deal with those issues in terms of plans of subdivision, and we believe that that's where the public involvement should be: at the front, not at the back.

**Ms Haeck:** There are other members who wish to raise some points so I will defer to them, although I don't agree with what you're stating.

**Ms Harrington:** I'm glad to hear that basically we're



starting from the same point, and that is that the planning process needs a lot of reform. We believe that we need accessibility for the public, timeliness of decisions and a fairness of the process.

When we were in London a couple of weeks ago, we heard from Michael Smither, who is with *Municipal World* magazine, and he expressed to us that the people of Ontario are feeling isolated, that was his word, from the process, and we have heard from several citizens' groups as well.

My question to you is with regard to what I like to call the Dale Martin process, and that is, he wants to change the nature of the process so that people are involved from the front end and therefore the process will go more smoothly, will go more quickly and will save money, and that's what we want as well, and encourage development and encourage competitiveness across this province. Do you not feel that changing the nature of the planning process in this way of citizen involvement will be the direction to go?

**Mr Mundell:** I guess to clarify once more, there's no doubt that this association stands firmly in its regard that the citizens of the province of Ontario should be involved in the planning process, and there's no doubt that we believe, to make this process work better, that they as well as all other agencies of the province should be involved in the front end so that we can make this process work. That's our position.

The disagreement comes in that Bill 163 we do not believe does that. We believe that there are substantive flaws and substantive changes needed to make that process be front-end, not back-end. And those particular recommendations which we have put forward we believe help to achieve that goal.

**Ms Harrington:** Thank you for your suggestion.

**The Chair:** Thank you very much. We've run out of time for the first half of the presentation. Please move on.

**Mr Mundell:** Thank you very much for your time.

**Mr Mickle:** Thanks again, Mr Chair. The next portion of AMO's presentation will focus on the Local Government Disclosure of Interest Act and the proposed amendments to the Municipal Act as they relate to open meetings and the disposal of real property.

AMO has considerable interest in the content of this legislation and appreciates the opportunity to provide comments. The association has prepared a detailed response to the draft legislation as well as an abridged report, both of which have been submitted to the committee. The abridged report focuses on the major concerns of the association to the various proposals set out in the legislation and will be the reference for today's presentation.

My colleague John Harrison, councillor, township of Delhi, will present AMO's response. John is a member of the task force which developed the association's response to these components of the bill.

Before John addresses the specifics of the legislation, I would like to comment on an issue which was not referred to in the legislation: that is, the operation of the commissioner's office. The association is quite concerned

with the lack of information provided on how the commissioner's office will be administered, in particular the funding arrangements for such a body.

AMO has continually been advised that an announcement by the minister would be forthcoming, but to date the association has not seen or heard any mention of this matter which may have significant financial implications for the municipal sector. We urge the province to provide further details on this component of the reform as soon as possible. I'll ask John to take us through our submission.

**Mr John Harrison:** Mr Chairman, members of the committee—

**The Chair:** Excuse me, John. Mr Hayes has a comment.

**Mr Hayes:** Bill, on that point about how the commission is going to be funded, I think we've said this several times and I'm actually surprised if it hasn't been communicated to you that it will be funded by the province.

**Mr Murdoch:** When did you write your letter?

**The Chair:** All right. Anyway, there's a point of clarification.

**Mr Hayes:** Who do you suggest, Bill?

**The Chair:** Mr Hayes, that's fine. Mr Harrison, please continue.

**Mr Harrison:** It's nice to hear that the reason we haven't heard about the structure and the funding of the commissioner's office is the fault of Canada Post rather than the fault of anyone else. We certainly look forward to receiving the detail of that as soon as possible.

It's not my style to read a brief, so I'm not going to read this one to you. I will make some comments and highlight what I see as the important things. I'm sure that you'll all have lots of spare time to read the brief at your leisure.

There has been a long history of consultation in regard to this particular matter. I want to acknowledge at the beginning of my presentation that many of the issues that AMO has raised during the period of that consultation have been dealt with to our satisfaction in this draft legislation. That's not to say that we're entirely satisfied, and I'm here to highlight the issues with which we are not entirely satisfied, but many of our concerns have been addressed.

The editorial issues which we've identified have been provided to the ministry, and we live in the assumption that since those are all so clearly justified they will be coming forward to you as amendments to the draft in due course, so there aren't many editorial comments in this particular paper. Having said that, our first point is in fact to a certain extent editorial.

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The legislation requires that after the disclosure of a pecuniary interest at a council meeting, the member "shall immediately leave the meeting and remain absent" etc. We have two editorial problems with that. It's the standard practice for municipal councils to have an agenda item at the beginning of the agenda for disclosures of interest. If in fact I have to disclose my interest under an agenda item at the beginning of the meeting and

then immediately leave the meeting until after that matter has been dealt with, then I'm going to have to miss most of the meeting rather than the specific part of the meeting that relates to the particular interest that I may have. The use of the word "immediately" is clearly inappropriate.

Secondly, we would like to clarify the phrase "leave the meeting." We're concerned that it might at some point in time be construed by some that if one rises from one's place at the council table and removes oneself to the back of the room, one has left the meeting. We would suggest to the committee that it be clarified that the intention here is that an individual in fact remove himself entirely from the room in which the meeting is taking place.

I'm going to go through fairly quickly here in terms of skipping from point to point.

We're requesting that the ministry provide you with a definition of the term "gift and personal benefit" so we'll know, when something is offered to us for some reason or another, whether or not it is in fact a gift which is covered by the legislation. AMO is always chewing on the government's ear and the Legislature's ear to give us the opportunity to have local decision-making. This is perhaps a departure for AMO. In this particular case we're requesting the opposite: We think that if in fact there's a \$200 maximum for disclosure of gifts, that should be standard across the province and the confusion resulting from individual municipalities being allowed to change that maximum is unnecessary and may burden the commissioner in the performance of his or her duties.

We have a concern that there are a number of members of municipal council who sit on two municipal councils at the same time: a lower-tier council and an upper-tier council. The legislation as it's drafted at the moment appears to necessitate a filing of financial information at both levels. We feel that's unnecessary duplication and that the legislation should be amended to indicate that the disclosure should be filed at the lower-tier council level when that particular situation pertains.

We have from the beginning indicated that we felt that the requirement for the disclosure of financial information by members of council gives an undue advantage to non-members of council at subsequent elections. We believe that the legislation should be changed to require that candidates for municipal council should be all on the same level playing field and that all candidates for municipal council should file the same information that members of council are required to file once they're elected.

We feel that there are two problems we can identify, with what we know at the moment about the commissioner's office. Those are: In the first place, we feel that the legislation should be enhanced to identify the role of the commissioner in giving advice and counsel to members of council and members of the public in regard to the interpretation of the act. That is an important role that you might be able to read into the legislation as it stands but hasn't been clearly set out, and we feel it's an important enough role that it should be clearly set out in the legislation.

Further, there's no provision in the legislation requiring

the commissioner to notify a member of council once a complaint against that member of council has been filed. This is so obviously an issue of fairness that we can only assume that it's been omitted by error. We suggest that the government seriously consider putting in a mandatory provision that when a complaint is filed with the commissioner, the commissioner must then tell the individual who's being complained about that such a complaint has been lodged.

It's been our position for some time that the purpose of the commissioner is to be the gatekeeper to the courts in regard to allegations of municipal conflict of interest. The legislation as it stands at the moment allows individuals a right to go to court after the commissioner has made a determination that in fact there is no breach that the commissioner feels justified taking to court himself or herself. We urge you to amend the legislation to make the commissioner a gatekeeper to the court process in regard to municipal conflict-of-interest allegations.

That seems so clear to us as an appropriate thing to do that it's hardly necessary to go on to the next point. However, if you should not heed that particular advice and allow individuals still to go to court after the commissioner has made a determination, we do think that the legislation should be amended to provide that the commissioner is not a compellable witness in regard to those particular proceedings when an individual is going to court. The commissioner has very significant powers of investigation. The commissioner will get together a very significant file about the affairs of an individual member of council against whom an allegation has been made. If the commissioner is compellable, all of that information, which would not normally be available to the litigant, will also be compellable. We don't think that's fair.

Secondly, we feel that it's going to hinder the commissioner in the performance of his or her duties if he or she is a compellable witness. If internally, inside the commissioner's office, an investigator feels that it's important to write a memo saying his or her view is this or that and subsequently the commissioner makes a different determination, if the commissioner is compellable that internal memo can be brought forward into court and questioned. What we think that will result in is that nobody in the commissioner's office will put anything on paper, and the whole functioning of the office will be made more difficult because any paper that's internal may be made available in subsequent litigation. We think the way to solve that is to have it specifically in the legislation that the commissioner is not compellable.

The current legislation has two saving provisions for the benefit of members of council. One of those is that the member of council didn't know that he or she was perhaps offending against the legislation. We feel that's been covered off in the draft that's before you. There is, however, also a provision in the current legislation for bona fide error. We think that particular provision should be carried forward and we've made recommendations as to how that could be done.

Let me put to you the situation where a member of a municipal council—and I know this deals with school boards and other local boards as well, but I'm here to



talk about members of council—apprehends that he or she may have a problem and goes to the commissioner and/or his or her own legal counsel and gets legal advice. The advice from legal counsel and/or the commissioner is that no, there's not a problem, and then subsequently it appears to a judge that there has been a problem. We think that if someone has made every possible effort to be advised as to whether or not there's a problem, if it subsequently appears that there's a problem, contrary to that advice, he or she should have some sort of ability to receive some sort of diminution of penalty.

Second to last, the issue of the filing of financial disclosures. We realize that there's an issue here of paralleling at the municipal level the position that members of the Legislature are in. However, we have a serious, honest—let me say to you again that this is an honest concern, that people who otherwise would run for municipal council, particularly in small municipalities, may well be deterred from running for municipal council by the fact that they have to hang out on the line information about themselves which everyone else, as members of the public, does not have to hang out on the line.

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We have, with the ministry, hashed over all sorts of possible ways of resolving this and the details of what might or might not be disclosed. However, we don't intend to do that again before this committee. What we would like to do is have the committee and the government seriously consider looking at the solution to this problem which has been discovered in the province of Manitoba.

Here I will refer you to the brief. On page 9, we've reproduced the provisions in the Manitoba Municipal Council Conflict of Interest Act which relate to this issue. Those provisions basically say—I won't read them word for word—that the clerk who is the holder of this information doesn't release it to every individual, or probably reporter from the local weekly paper, who wanders in to the front desk and says, "I'd like to see the member's file." The clerk's responsibility is, again, to be a gatekeeper, if you will, of the process.

If some member of the public has a concern in regard to a potential conflict of interest, that member of the public writes the concern down, writes down where he or she thinks the conflict may be, provides that written request to the clerk, and the clerk is then responsible for going to the information that's been filed in his or her office, reviewing that information and advising the member of the public as to whether or not there in fact appears to have been a contravention of the legislation or whether there might be a conflict arising.

I know it is not the tradition of the Ontario government to follow in terms of drafting legislation but to lead valiantly and have every other province in the country adopt what we so cleverly do here in regard to issues like this, but we think that here perhaps Manitoba is just a tad ahead of us and it would be a good thing for us to seriously look at this provision from Manitoba.

There is also, I'll just point out, a request in the brief that the same legislative protection that's afforded to members of the Legislature in regard to statements made

in the Legislature and protecting those statements from subsequent civil action should be afforded to municipal councils. I'd be happy to respond to any questions.

**The Vice-Chair:** Thank you for your presentations. Each party has about eight minutes. We'll start with the PCs this time. Mr McLean.

**Mr McLean:** There was another group that wanted to deal with that very same issue, the Manitoba model, at our hearings, I believe, in Chatham. I happen to agree with that. I think it is a good model and it's there for people to see. I agree with what you're saying with regard to the conflict of interest. There is one area that I wanted to talk about, and that was the bona fide error. Perhaps you can just explain that a little more broadly for me.

**Mr Harrison:** Our position is that if a member of a municipal council takes all reasonable steps to inform himself about whether or not there is a conflict and acts on the professional advice he receives, and then subsequently it's found that the advice was in error—even lawyers make mistakes—the individual who has requested the advice, who has acted on the advice in good faith, should not subsequently be subject to the mandatory penalties that are in the act. This act says that if you are found in conflict, there will be a penalty imposed. We feel that if you are found in conflict but it is also discovered that you made every effort to avoid that conflict, there in fact should be no penalty, that it is the one circumstance under which the mandatory penalties that are contained in the draft legislation should not be imposed.

**Mr McLean:** Once a complaint is made and the commissioner does his investigation, the commissioner then would recommend whether or not there is going to be a hearing before a judge.

**Mr Harrison:** The commissioner decides whether or not he or she will take the matter to a judge. We say the commissioner should decide whether or not it goes forward; the legislation doesn't go that far.

**Mr McLean:** But the commissioner has done an investigation into their assets and liabilities or whatever, the disclosure. They have done an investigation of his disclosure and the commissioner determines that there is cause to go before a judge. You're saying the commissioner's evidence that he has cannot be used in the court of law.

**Mr Harrison:** No, no, we're specifically not. What we're saying is, under the circumstance where the commissioner has decided not to go to court—the commissioner has looked at it, the commissioner has said, "No, we the commission, we the powers that be, should not take this to court"—there's still a provision that says an individual member of the public can take the matter to court.

So what I'm saying is, if the commissioner decides, "No, we shouldn't go ahead," and a member of the public decides to go ahead in any case, despite the commissioner's determination, that member of the public should not then be able to subpoena the commissioner, bring the commissioner into court and force the commissioner to

testify in court about either the internal operations of the commissioner's office or about information that the commissioner may have discovered during the course of his investigation which would not otherwise properly be before the court.

**Mr McLean:** So an individual could then decide he's going to take that person to court, regardless of what the commissioner finds, if he wants to.

**Mr Harrison:** That's right. But we say, first of all, the individual should not be able to take that matter to court. Second, if it's determined that an individual should be able to take the matter to court, the individual should not then be able to drag the commissioner, who has already made a determination that it shouldn't be in court, into the matter and have him as a compellable witness in court.

**Mr McLean:** I would have thought the commissioner's decision would have been final and that would have been the end of it, but apparently not.

**Mr Harrison:** If that's the determination of the Legislature, we will be more than happy. That is our primary representation.

**Mr McLean:** It's well founded.

"Shall leave the room immediately": You're so right with regard to when they look at the agenda and three quarters of the way down the agenda they've got a conflict. I hope the ministry is certainly going to take another look at this, because I think it should be changed, if that is what's in that amendment you're talking about; and the gifts section too.

I think your brief is very clear and I hope the ministry will look it. Bill, I think, has a question.

**The Vice-Chair:** Mr Murdoch, you have about two minutes.

**Mr Murdoch:** John, thanks for your presentation. I certainly appreciate it. You didn't talk too much about open meetings, and there are concerns here. Do you want to mention a bit how you feel about that?

**Mr Harrison:** Frankly, the concerns that we have about the draft legislation in regard to open meetings and disposal of property are purely editorial. We don't have, as an association, any difficulty with the direction this legislation takes in regard to open meetings and disposal of property.

**The Vice-Chair:** We'll move to the government members. Who would like to have a question? Ms Haeck, please go ahead.

**Ms Haeck:** We had, actually in Napanee, several people from Belleville come forward who had some very grave concerns about what was happening at their city council. What appeared to be concerning them was that the kind of procedural questions that you say seem to be consistent across the province are far from being that. Councils tend to follow their own processes, I wouldn't say in all instances but at least in some, so that consistency isn't necessarily a blanket statement that one can make. So I would suggest maybe that you look at the presentations that were made to us at Napanee by some of the Belleville citizens, because they definitely laid out some very strong concerns about the process there.

I did want to refer to page 4 of your brief where you refer to the number of disclosure statements. In the case of the elected member sitting on two councils, it's usually the mayor. It's only my own experience, so excuse me. I can see the nodding of heads, so my apologies. But the mayor is the one who sits on regional council on behalf of the municipality, and when he is sitting on regional council at this point, he is also making decisions.

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This is a bit of a stretch, I admit, but not everyone recognizes the names of all the mayors of the region and may in fact recognize that person as a regional councillor and may wonder why he or she cannot get information about the decision of that individual at the regional level, as opposed to having to then go into the lower tier. I'm just wondering why a copy of that disclosure statement could not be filed, even if it's just a straight photocopy, with the higher tier.

**Mr Harrison:** If I could respond, I did not suggest that the procedure of municipal councils across the province was consistent. Certainly, it's not. All municipal councils have control of their own procedure and there are many differences. Legislation does require that every council adopt a procedural bylaw and I would think that may tend to greater consistency over a period of time.

What I did suggest was that there's a fairly consistent practice of having an agenda item close to, if not at, the beginning of a meeting requesting members of council to identify their conflicts early in the meeting, and that's the problem we see with the use of the word "immediately" in the particular section that we pointed out. It's not universal, but I would guess you'd find 80% of councils had such an agenda item, if not more.

In regard to members who sit on two tiers, there are all sorts of different situations. It's not just mayors, certainly, who sit on two tiers. We just simply feel that keeping duplicate records, particularly in the circumstance where we've suggested that under the Manitoba model, which we very strongly put forward to you—we think the Manitoba model may in fact be the solution to the problem we've identified about discouraging people from running for council. Particularly under a situation like the Manitoba model, if you have doublefiling of that financial information, what you're really doing is allowing double-dipping in terms of requests for information. You're putting two clerks in the position of having to express themselves on the same issue, and we just don't think it's necessary.

The information, when filed with a lower-tier clerk, will be available to any member of the public who wishes to have access to it, and somebody who is concerned about the actions of a member at an upper-tier council, whether or not there was a conflict, we would think would probably be an individual who would be sophisticated enough to know or to find out—it's not going to be a secret—that the necessary information they need to have to resolve their concern is in the clerk's office of the local municipality from which that member comes from.

**The Vice-Chair:** Mr Wilson now with a question.



**Mr Gary Wilson:** I'd just like to pursue this line a bit. You mentioned with regard to smaller municipalities, and I think the common wisdom, say, about smaller municipalities is that everybody knows everybody else's interests, that in fact you wouldn't even have to worry about the provision of that kind of information. But we know that's not true. Our information is that 40% of the conflict-of-interest court cases originate in municipalities of fewer than 5,000 people. So obviously this is a concern and there would be good grounds for providing that. Do you want to comment?

**Mr Harrison:** Let me go, and then Bill can follow up. We're not for a moment indicating that there's any less likelihood that there will be conflicts in a smaller municipality than in a larger municipality.

What we do say is that in rural, small-town Ontario where, as you say, everybody may well think they know everything about everybody else's business, in fact in many cases they don't, and if we force people, as a precondition of running for council, to write down on a piece of paper their significant assets and their significant liabilities and hand that to a municipal official so that it's in the town hall—I mean, in my town probably in a week, 80% of the people walk through the front door of the town hall. Under this legislation, all any one of that 80% has to do is sort of take two steps to the right and say to the clerk, "I want to know everything that John Harrison owns and I want to know everything that John Harrison owes," and the clerk has to hand it to them.

While there may be good reasons for that information to be filed and to be available in a controlled manner, we think that may well deter good, capable people from putting their names forward as municipal councillors, and we want to avoid that if we can.

**The Vice-Chair:** Mr Mickle, did you want to comment?

**Mr Mickle:** Regarding the 40% that you mentioned, I would like to have it clarified. What do you mean, that 40% of the people who have been in conflict come from small municipalities? If that's the case, you're talking about the few people who come into conflict and the percentage that are from small municipalities. But as a percentage of the number of elected people, it's certainly not 40%. It's at a much, much lower number. So I think to throw out the 40% may be misleading.

**Mr Grandmaître:** How many are convicted?

**The Vice-Chair:** I think that is clear now. Mr Wilson, is it clear? Mr Hayes?

**Mr Hayes:** Forty per cent of the cases. That's what we're saying, right? Forty per cent of the cases, that's all we're saying, under 5,000.

**The Vice-Chair:** If you have a quick question, Mr White, you may go ahead.

**Mr White:** A very quick question: You were suggesting that municipal councillors might be discouraged from running if information about them was available, about their financial wherewithal, and yet I see that despite their knowledge of the complete, rather encyclopaedic knowledge that the Conflict of Interest Commissioner has in regard to members of provincial Parliament, many

municipal councillors run for provincial office. I'm wondering why that would be.

**Mr Harrison:** We think, frankly, it's because the commissioner of conflict at the provincial level acts as a gatekeeper, not in exactly the same way that we're suggesting from the Manitoba model, but in a similar way. We suggest that if we can get past what information should be filed, and we've tried to do that, we then have to talk about access to that information. We would suggest to you that the information that's on file with the commissioner in regard to members of the Legislature is much less accessible to members of the public than would be the case under this proposal. What we're saying here is, okay, we'll file it, but let's have a system of access that controls that access and doesn't just make the information on the street for purposes that don't have any relationship to the reason for which it was filed.

**The Vice-Chair:** Thank you, Mr Harrison. We'll move to the Liberal Party and their questions. Mr Grandmaître.

**Mr Grandmaître:** Madam Chair, this is not the first time we've heard about the Manitoba Municipal Council Conflict of Interest Act. Is it possible to obtain a copy of the Manitoba model so all members would—

**The Vice-Chair:** I'll ask staff.

**Mr Harrison:** If staff here can't provide it to you, we can provide it to you.

**The Vice-Chair:** Yes, we will be able to provide it for you, Mr Grandmaître.

**Mr Grandmaître:** Madam Chair, again, I'm going to try my luck. Last week I wasn't successful in obtaining a reasonable or a satisfactory answer to my question, and I want to go back to "Duties of a Member" on page 2 of AMO's presentation. Disclosures are provided at the beginning of the meeting, and I want to give you an example. Let's say I have a conflict of interest on item number three on the agenda, and I stand in council and I state my conflict of interest. Who is the judge of my declaration? Maybe it's frivolous. Maybe I don't want to vote on this issue.

**The Vice-Chair:** You're asking staff?

**Mr Grandmaître:** Yes.

**The Vice-Chair:** Would you be prepared to answer?  
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**Mr Sidebottom:** In the first instance, members have to determine for themselves whether or not they have a pecuniary interest in the matter before the council. It's the member's responsibility, having identified the interest, to then determine whether or not one of the prescribed exceptions would apply, and those exceptions include things like voting on salary or voting on appointments on a public body, an interest that may arise from drainage works or local improvement works.

If you have satisfied yourself that you have a pecuniary interest in the matter and it is not an exempted interest, then it is your responsibility and yours alone to make that oral declaration that you have an interest and that you will not be participating in the discussion or in the vote of the matter.

For any person to stand in judgment of you, they would have to be an Ontario judge. Both under the current legislation and under the proposed legislation, the ultimate determination is by the courts and it would be up to some person to initiate an action against you.

In the current legislation, any elector can initiate an action against you. Under the proposed legislation, a person may bring the matter to the attention of the commissioner, describing the alleged contravention, describing the details surrounding it, and then it would be up to the commissioner to determine whether the commissioner would proceed with the matter or not. As the AMO delegates have pointed out, even if the commissioner chose not to proceed, then a person could bring it themselves.

But in the first instance, you must judge yourself whether or not you have an interest, and then if a person doesn't believe that you have fulfilled your duties properly, they must take it before the courts.

**Mr Grandmaître:** Yes, but I'm going beyond this. I'm going beyond this because I've had this happen to me, people standing in council declaring a conflict of interest. They thought they had a conflict of interest and the mayor, knowing full well that this person was using this escape—I better be careful of how I say it—as an excuse not to vote on the item. That's why I'm asking you, who is the judge of the member's declaration? He can say, "Well, look, I think I've got a conflict of interest," and he can sit down. Who's going to question him if he thinks he's got a conflict of interest? Because there's no such thing as a possible conflict of interest or a conflict of interest?

**The Vice-Chair:** Is there any further comment on that?

**Mr Sidebottom:** I can only repeat that it's the members themselves, first, who must determine whether they have an interest, and if a person's not satisfied with your declaration, then, you know, there are the court remedies, and then presumably the electorate will make a determination if they find that you're perhaps, if you like, overdeclaring for frivolous reasons.

**The Vice-Chair:** Mr Grandmaître, are you complete?

**Mr Eddy:** Yes, he's—

**Mr Grandmaître:** Yes.

**The Vice-Chair:** Mr Eddy.

*Interjection.*

**Mr Eddy:** We work very well together, as you can see.

You say the legislation lacks clarity, and I think it's a good point. We've got to make sure that this third, or is it the fourth, trip around the block on this finally is clear, because we've been around the block too many times. There are things now that are hopefully going to be included that should have been included the first time, and it was recommended they be, but they're not. So let's be clear and if there's any problem, let's get it cleared up.

On the duties of a member to declare, you make a good point there. I think it can be changed with the

wording because it's when the person declares a pecuniary interest and therefore, to avoid a conflict of interest, they leave and withdraw from the room in which the meeting is taking place; very important. But we have to be sure that it's at the time when that's coming up in a report, rather than the entire meeting. It's got to be changed, and I thank you for bringing that forward.

I tend to agree with you, filing the financial disclosure statement at the lower tier, except that if we went to the Manitoba model, it wouldn't be a problem if it was filed at both tiers, would it? I think we really should, because it's not given out freely to anyone who asks. It's used by the clerk when someone charges or states that there is a violation. Is that right?

**Mr Harrison:** That's what the Manitoba model proposes, but what we're saying is that if in fact the determination is made to go to the Manitoba model, the position in regard to filing only at the lower tier becomes even more important because if you file at both tiers and the information is accessible at both tiers under the Manitoba model, the risk that you then run is an individual making a request at the lower tier and at the upper tier and having potentially the two clerks give different interpretations of the same filing. We think that the information should be available at the tier closest to the electorate but that there should only be one clerk who was responsible for holding the information and making the determination under the Manitoba model.

**Mr Eddy:** That wouldn't be a problem even though a citizen charges that there has been a conflict of interest by a member at the other one?

**Mr Harrison:** No, no, not at all.

**The Vice-Chair:** Our time is almost complete. At this point, the parliamentary assistant would like to make a couple of points of clarification.

**Mr Hayes:** In regard to the duties of a member, you're talking about if a member has a pecuniary interest, he or she "(d) shall immediately leave the meeting and remain absent from it until the matter is no longer under consideration...."

I do know, and I think most of us do, that members do declare pecuniary interest at the beginning of the meetings. You could do that when you come to that item. There's nothing stopping the person from declaring again at that time or just automatically leaving the meeting at that time.

However, the one thing here, you made a recommendation, "shall leave the room in which the meeting is taking place." Madam Chair, if you feel that would be maybe a little better wording, I think we can take a look at that and maybe add those particular words in there, "the room."

**Mr Harrison:** Let me disagree with the parliamentary assistant, if I may. I'll tell you, I do this stuff, and if this legislation is passed and I stand up at the beginning or a member of council stands up at the beginning of the meeting and says, "I've got a conflict in regard to item 25 on this agenda," and does not then immediately leave the meeting—

**Mr Hayes:** I don't think it says that.



**Mr Harrison:** That's what it says.

**Mr Hayes:** Excuse me, I think I've got the wrong one.

**The Vice-Chair:** Let's see if we can get this clear.

**Mr Eddy:** While we're waiting for the parliamentary assistant, I must say I agree that candidates for office must file a statement as well to be on an equal footing. If we're going to have it, it should apply to all, otherwise it's unfair, I think.

**Mr Hayes:** "Shall immediately leave the meeting and remain absent from it until the matter is no longer under consideration...."

**Mr Harrison:** I say that "immediately" refers back to clause (a), when you have done what it says under clause (a) of disclosing, you then "shall immediately."

**The Vice-Chair:** We don't have time.

**Mr Hayes:** We'll resolve it, and if people want to take it that far, it's fine.

**The Vice-Chair:** We don't have time to further debate it, but I'm sure we will be looking into it. I would like to thank the representatives from the Association of Municipalities of Ontario for coming forward this afternoon with all your detailed presentation; we appreciate it.

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#### CANADIAN INSTITUTE OF PUBLIC REAL ESTATE COMPANIES

**The Vice-Chair:** I would like to call forward the Canadian Institute of Public Real Estate Companies, if you would come to the microphones. I believe we have Mr Ross Cullingworth, Mr Ron Daniel and Mark Noskiewicz. If you would, in a moment, introduce yourselves, you have half an hour for your presentation, and we hope to have some of that time for questions.

**Mr Ross Cullingworth:** Thank you, Madam Chair, committee members. I'm Ross Cullingworth, chairman of Coscan Development Corp, and we have with us here today Ron Daniel, who is the executive director of CIPREC, and Mark Noskiewicz.

CIPREC is an important voice for the Canadian real estate development industry. A copy of our annual report was, I think, included with our submission, which we did get in last week to the committee. The member firms of CIPREC include most of Canada's largest real estate investment and development companies whose shares are publicly traded on recognized securities markets, plus real estate subsidiaries of public companies, trust companies, life insurance companies and banks. The total real estate assets of CIPREC members is in excess of \$50 billion.

I would like to make a few general comments before turning it over to Mark, who is with Goodman and Goodman and is our technical adviser on dealing with the specific aspects in our submission.

I've been involved in the land development business in Ontario for 30 years. I thought the basic objective of reviewing the Planning Act was to streamline the system and make it more possible to process developments on a more timely basis. The proposals included in Bill 163 will do the opposite. They will slow the process down and provide people who want to impede development

with new methods to delay bringing property to the customer.

House prices are affected very directly and significantly by supply and demand. When land is not available to satisfy new growth in markets, we can have severe pressure on pricing. In 1985, a lot at the south end of Vaughan or Markham had a value of approximately \$80,000. In 1988, just three years later, that same lot sold for \$275,000. There are many examples of that. This occurred because the market was unable to supply sufficient housing to satisfy the demand, and this constraint was due entirely to land being unavailable to the building industry. These same lots would sell today for approximately \$160,000. In the last few years supply has outstripped demand.

I can't emphasize enough to encourage the committee to ensure that the changes you implement cannot be misused to delay the development process. We do not need another dislocation in the market, as occurred in the late 1980s.

Now I'd like to ask Mark to deal with the specific items and recommendations we have as an institute.

**Mr Mark Noskiewicz:** Madam Chair, members of the committee, on the second page after the cover page of our brief there's an executive summary which sets forth four main concerns, and I wanted to speak primarily to those four main concerns.

The first concern is that Bill 163 would inappropriately permit approval authorities to refuse requests to refer official plan matters to the Ontario Municipal Board on the basis of prematurity. The specific provision in question is proposed subclause 17(29)(a)(iv), and what that subclause says is that an approval authority, typically a regional municipality, could refuse a request to refer a proposed official plan amendment to the Ontario Municipal Board if it is of the opinion that the proposed amendment is premature. That provision would apply both to amendments adopted by a municipal council or to amendments requested by a private land owner.

CIPREC believes that this provision would create a dangerous and in fact draconian opportunity for approval authorities to unilaterally decide that an official plan matter cannot be dealt with by the municipal board, and essentially the official plan proposal would be stopped dead in its tracks.

By way of an example, if a local municipality adopted an official plan amendment to expand its urban boundary or adopted an amendment to redesignate lands within its urban boundary from, say, industrial to residential, the approval authority, which again typically is a regional municipality, could simply decide that the application is premature, and that would be the end of the matter.

CIPREC believes that this provision is inconsistent with the general scheme for resolution of planning matters that the Sewell commission suggested. As we understand that scheme, it had three main elements: (1) policy-making would occur at the provincial level, (2) decisions would be made at the municipal level and (3) dispute resolution, if necessary, would continue to occur at the Ontario Municipal Board.

It is important for the committee to understand that the development industry views recourse as a last resort to the Ontario Municipal Board as a fundamental component of our planning system, and the provision in question here, we believe, would significantly water down that right of recourse to the Ontario Municipal Board by effectively setting up approval authorities as gatekeepers as to whether a matter could proceed to the board.

Planning applications, no matter how worthy of approval, invariably attract some opposition. Prematurity is a frequent issue raised by objectors. More and more one hears the call for further studies. To allow an approval authority, not the municipal board, to unilaterally decide the question of prematurity is a recipe for further delay, and in some cases indefinite delay. As Ross has indicated to you, delays in the process, in the end, restrict the supply of developable land, which in turn leads to increased prices to the ultimate consumers. So our recommendation would be to delete that clause.

Our second main concern is that Bill 163 would unwisely require all planning decisions to be consistent with provincial policy statements. The committee has heard, I am sure, quite a debate on this issue. We recognize that the government appears to feel that a consistency test is appropriate, given the increased emphasis on provincial policy statements. I should make it clear that CIPREC is not objecting to the notion of a planning system led by provincial policy, but it does feel that the legislative change to a consistency test is inappropriate. You've heard that this is not just a concern of the development industry but also a concern voiced by the Association of Municipalities of Ontario. I won't repeat all the points they've made.

We've listed many reasons in our brief as to why we think the change to a consistency test is inappropriate. Firstly, the change appears to have been fuelled, in our view, by a misconception that the have-regard-to test under the existing act has resulted in policy statements being ignored. We simply feel there's no basis for that. By way of an example, the housing policy statement was introduced a few years back and clearly has been applied in planning decisions over the last few years. We echo the concern of the Association of Municipalities of Ontario that a consistency test is inconsistent with the notion of trying to reconcile conflicting policies.

I guess CIPREC's biggest concern is that the consistency test is inappropriate, given the lack of clarity that appears in many of the policy statements. We've given one example in our brief. Policy statement A contains general policies aimed at prohibiting development in environmentally sensitive areas. As an example, development is not to be permitted in significant ravine, valley, river and stream corridors. When one then looks for a definition of "significant," one finds the statement that "significance will be determined based on criteria and guidelines established by the province or on comparable municipal evaluations." So in the end the policy statement doesn't establish the meaning of "significant," and in effect the real substance of the policy, which is where development can and cannot take place, is missing from the actual policy statement.

That really is the nub of CIPREC's concern: that by introducing vague policy statements into the planning process and then requiring decisions to be consistent with those vague statements, there is certainly no sense of any clarity being added to the process. In the end, CIPREC believes that it is just giving opponents of development proposals more ammunition with which to oppose development and, as Ross said, create more delays in the process.

The third major area of concern as set forth in our executive summary is that Bill 163 would give municipalities vague, expanded zoning powers to prohibit development in environmentally sensitive areas. The paragraphs in question here are 34(1)3.1, 3.2 and 3.3. Again, I should make it clear that CIPREC endorses the need for the planning process to have strong regard to environmental concerns.

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The concerns with the proposed new zoning powers are as follows: When read in conjunction with the new policy statements, there is still great uncertainty as to how wide the net is being cast in terms of what constitutes an environmentally sensitive area; second, no direction is given in the legislation as to how to balance the environmental concerns with the economic interests of private land owners; and third, it is CIPREC's view that environmental concerns are thoroughly debated under the present Planning Act. Development proposals, even on lands that are clearly within established urban areas, are today routinely met by environmental objections and concerns, and land owners must, quite properly, establish that their proposals address or mitigate in some appropriate way these environmental concerns.

In CIPREC's view, the expanded zoning powers are not needed and if they are introduced they will again simply provide more ammunition for those trying to delay or block planning approvals. We've set forth two specific recommendations in this area; the first is to delete the proposed clauses that would give municipalities new zoning powers, and the second recommendation is to amend proposed clause 1.1(b), which is the purpose section of the act, to introduce some notion that the application of provincial policy has to respect the economic interests of land owners.

The fourth and last major concern has to do with the fact that Bill 163 leaves major matters to be dealt with by regulation, and we've listed some of those on page 7 of our brief. They include: the fact that regulations would prescribe material that must be submitted and processes that must or should be followed in the processing of planning applications; there are regulations that would prescribe certain mandatory content requirements for official plans; and there are regulations which would prescribe the manner in which municipalities could adopt development permit systems potentially as a substitute for zoning and site plan controls.

CIPREC questions the need for many of these regulations. Presumably, prescribing material that must be submitted with applications and processes that must be followed is intended to assist the streamlining objective by defining more clearly what is expected in the process-



ing of a land use application, but it is our concern, without having seen the proposed regulations, that what will result instead is opportunities for people to debate whether an application is complete, whether the application should be processed, and we really question what in the end is being accomplished.

Again, it is difficult to comment properly without having seen the implementing regulations, and our major recommendation in this regard is that Bill 163 should not be introduced until the public has had an opportunity to review and comment fully on the implementing regulations and any guidelines and criteria that are intended to provide some understanding of how the legislation will actually work.

Following our brief we've set forth nine additional concerns, some of which are of a technical nature but many of which again relate to this concern that the legislation will not accomplish the streamlining that it is supposedly intended to accomplish. I won't go through them with the committee at this time, but they're there for you to review. Again, we've tried to make specific recommendations that would make the legislation more compatible with the government's stated streamlining objective.

**The Chair:** Thank you very much. There are five minutes per caucus. We have Mr White first and then Ms Haack if there's time.

**Mr White:** Thank you very much for your presentation. I'm interested, as you are of course, in the issue of streamlining. You bring up a number of very important recommendations, and I just want to see if I understand one or two of them.

On the issue of what can and cannot be appealed, you suggested not the first, second or third as being problematical, but the fourth item, which was the issue of prematurity. I'm wondering if the parliamentary assistant might be able to assist us on that issue of what is considered premature in terms of an application.

**Ms Pat Boeckner:** The issue of prematurity has been argued by municipalities, by the province, by agencies and by citizens over the years, and it has come to mean a number of different things. I guess primarily it's been interpreted as the essential services for development not being present. Usually that means sewer and water is not present or available. It can mean other things such as major roads or a transportation structure are not there. But usually that's the meaning, that some basic service requirement is not present and therefore a development is premature.

Sometimes it can also mean required studies or reports have not been done. An example would be a development that may be proposed on wells and tile beds is put forward but there's been no information to support—no environmental information like a hydrogeological study or something like that. The response or the decision given by the board in that kind of case may be that the development is premature until the studies are done.

**Mr White:** Many of the submissions we've had before this committee speak about other issues in terms of prematurity; that is, the capacity of social service

systems, of schools etc, that should be taken into consideration and that aren't included in the act as yet. What we've heard, then, is a stance that says we should be going further in the direction of defining what is premature and overhasty development, and here we have a suggestion that we should have a further definition of what's premature?

**Mr Cullingworth:** The language that we have in the act, as we understand it, does not define what "premature" is. So with no definition, I think it's basically our concern that this can be misused. We don't deny at all that there are all sorts of examples that are appropriate to say they're premature. However, we find that the system gets used. I think, simply stated, all developments automatically have people who will object against them. They have those objections because there's a neighbour or a next-door position and it doesn't matter what's approved on it, they would rather see it as a piece of land than they would as any form of use. So the more facilities you provide for people to use arguments, the more they get used. I think in essence, Mr White, that's really what we're saying. Presumably, with no definition of what "premature" is, we have no way of—if someone says it's premature, then it's stopped in its tracks. We have no way of referring it to the OMB.

I think we could find it quite acceptable if the OMB could look at some of these types of things, and it could make decisions more arbitrarily and reject things as frivolous and premature, but there is no other body that's not a political situation that can deal with it.

**Mr White:** So you would need to have some jurisprudence, some sense of what is premature so you're not finding yourself shadow-boxing, fighting in the dark.

**Mr Noskiewicz:** I think the point that Ross was making is that, first of all, there is no guidance in the bill, as drafted, as to what premature means. But secondly, I think it's very difficult to come up with a definition that is going to work in every situation. It's not just municipalities and agencies that have debated the question of prematurity, but the municipal board routinely decides, on the facts on a given case, whether a particular amendment is premature.

I think CIPREC's overriding position is that ultimately it should be the Ontario Municipal Board, when various parties can't agree, that should decide the question of prematurity, not simply one political body in the middle of the process.

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**Mr White:** Thank you very much. As I was explaining earlier, of course, we've had delegations that have put the opposite case, that we should be going further in terms of defining what's premature and developing larger barriers. So I'm glad to hear your presentation say, "This makes it very difficult for us to do our business."

**Mr Eddy:** I'd like to talk about the matter of going to the OMB or referrals to the OMB. I think you're right on, because there seems to be a level of happiness with the OMB's functions in the province that has come out of these hearings that I was not aware of, but it is an independent body that holds an independent hearing, and

the proponent is there to give whatever information they wish to give and the objectors are there to counter that and give what they—and the municipality, the municipal council, may or may not be represented, as they wish, apparently. So it's an independent hearing, and having seen some of the decisions on the "premature" test of applications and the board going different ways, they explore all of the avenues. So it's probably the best way to go, the best way for the council, to refer it to the OMB for an independent hearing. I agree with that.

You've mentioned about the consistency test, and people have come forward. Municipalities are concerned about that "be consistent with" the policies, saying it will eliminate any and all flexibility. We've had the suggestion that the words should be changed, that the decision should be "maintain the principles and intent" of provincial planning policies, and it seems to ease the situation. Maybe you'd want to comment on that.

The only other thing I'd say is that your point about looking at the regulations is well taken in this case. Regulations are much more important with some bills than others because there are so many of them. It's been proposed that after the bill has been reviewed, as it will be finally next week, we should then look at the policies, the legislation and amendments, because there are going to be amendments from the government, regulations and the implementation guidelines, to really know what we're going to be faced with. Maybe you'd like to comment on that, either of you.

**Mr Noskiewicz:** Just on that point of the consistency test, we actually have indicated in our brief that as an alternative to keeping the "have regard to" test, if the words "be consistent with" were replaced with "be consistent with the general intent," that again would retain some of the flexibility that we think is essential to the planning process.

The other point I would make on policy statements, which is an interesting point to make, is that the act has allowed since 1983 for policy statements to be introduced. CIPREC doesn't quarrel with the legitimate desire of the province to lead more through its policy statements, but

since 1983 there really have been very few policy statements introduced, and we think the focus should be there rather than tinkering with a test which we really feel has worked quite well.

**Mr Murdoch:** Thank you for your brief. We certainly appreciate it. As Mr Eddy noted, we've heard a lot of people sort of talk good about the OMB. That just shows you how bad this bill is, if it's forcing people to talk good about the OMB. I mean, I might even have to say this if I hang around much longer, but I still can't draw myself to that conclusion yet.

I want to note that your last recommendation really sums it up, where you say we should not be bringing this bill forward before we see the regulations because they're going to generate what this bill's all about. I think most people would agree that the bureaucrats and the planners of Queen's Park have pretty well messed the planning system up in the past and we do need something new, but this doesn't address it. I just want to congratulate you on that last recommendation, because we've had it from many other people. It's just unfortunate that when they've made such a mess down here, they couldn't have come up with a better solution.

I just want to thank you again for bringing your concerns to us.

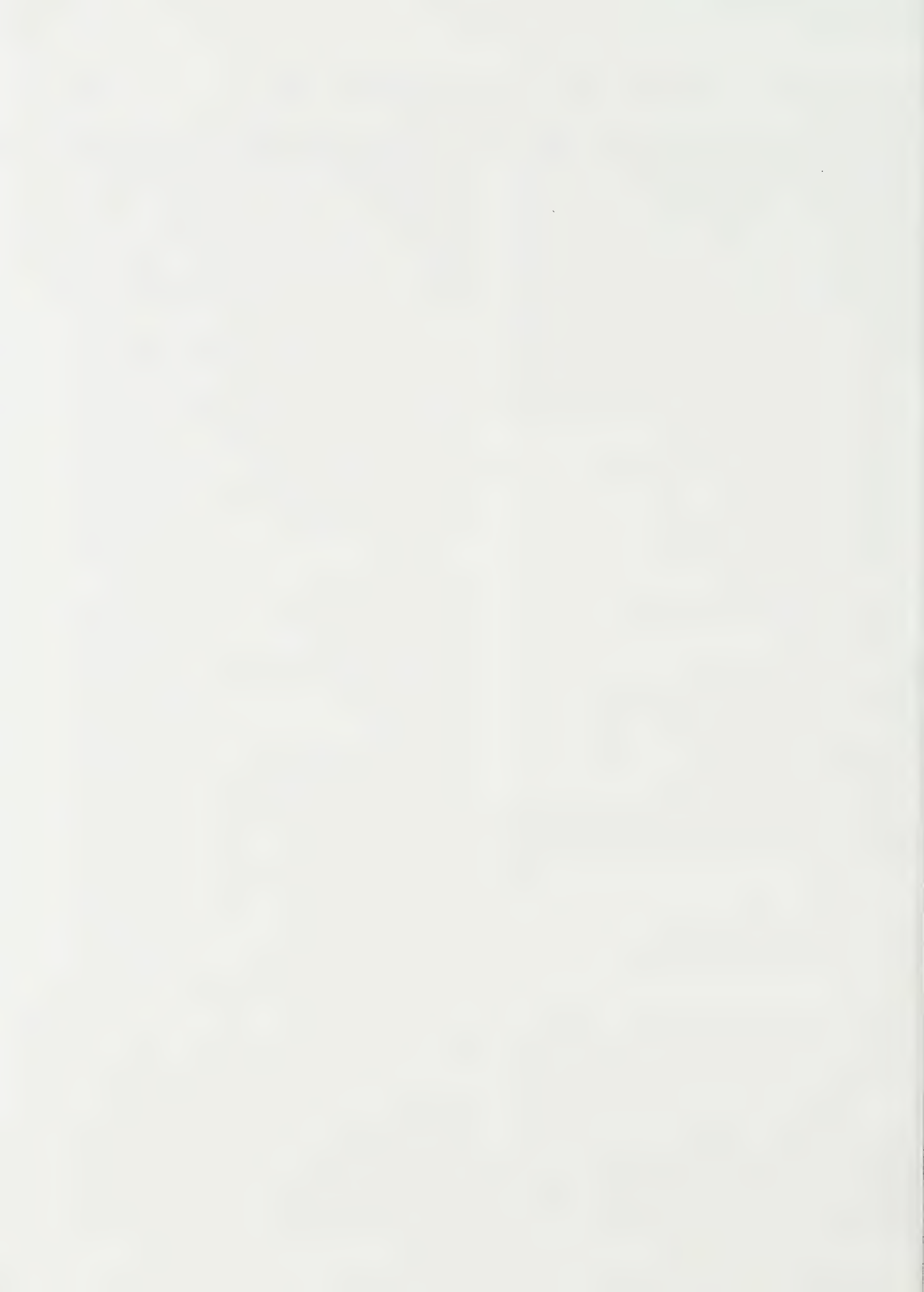
**Mr Cullingworth:** I think generally it's unusual, or at least people have the tendency to think that the development industry is at odds with the municipality so much, but I would say that we, in general terms, concurred; we sat through the AMO presentation and we concurred very much with most of the points they were making. We thought there was a lot of similarity between what we were looking for and probably what they were looking for.

**The Chair:** We thank you for your brief and for bringing your concerns to the attention of this committee.

As a reminder, the bus leaves to the airport at 5 o'clock, in the front: as punctual as possible, please. This committee is adjourned.

*The committee adjourned at 1626.*











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McLean, Allan K. (Simcoe East/-Est PC) for Mr Tilson

Murdoch, Bill (Grey-Owen Sound PC) for Mr Harnick

Perruzza, Anthony (Downsview ND) for Mr Bisson

White, Drummond (Durham Centre ND) for Mr Winninger

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Hayes, Pat, parliamentary assistant to minister

McKinstry, Philip, acting director, municipal planning policy branch

Sidebottom, Peter-John, senior policy adviser, local government policy branch

**Clerk / Greffière:** Bryce, Donna

**Staff / Personnel:** McNaught, Andrew, research officer, Legislative Research Service



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